DOCUMENT RESUME

ED 111 911 95 UD 015 462

AUTHOR	Moody, Charles D., Sr., Ed.; And Others
TITLE	Student Behavior, Rights and Responsibilities and the Fair Administration of Discipline. Conference Proceedings, April 1-2, 1974.
INSTITUTION	Michigan Univ., Ann Arbor. School of Education.
SPONS AGENCY	Office of Education (DHEW), Washington, D.C.
PUB DATE	30 Sep 74
CONTRACT	OEC-5-73-0068
NOTE	307p.
EDRS PRICE	MF-$0.76 HC-$15.86 Plus Postage
DESCRIPTORS	*Civil Rights; Court Litigation; *Discipline Policy; Discipline Problems; Due Process; Equal Education; *Equal Protection; School Attendance Legislation; School Law; *Student Behavior; Student Publications; Student Records; *Student Rights; Student School Relationship

ABSTRACT

These conference proceedings explore three major themes on student rights and responsibilities in public secondary schools, with the stated intent of facilitating progress toward an integrated school environment in which each student is (1) encouraged by a multiracial staff to participate fully, and (2) made to feel welcome as an equal member of the school. The first section examines the fair administration of disciplines and includes such topics as psychological perspectives, a principal's viewpoint, and the politics of administering a student discipline code. Under the general rubric of the present scope of school authority and student rights, the second portion considers various substantive and procedural issues such as changes in special education, student records, fact finding techniques, attendance policies, alternative placement, due process, police-school contacts, juvenile courts, and public schools. Three models focusing on curriculum, school policies, and inservice training are introduced and described in detail in the final portion of this report. The latter portion encompasses the area of educating the school community about school authority and student rights. A comprehensive appendix, that incorporates various legal and federal reference sources on matters of student rights and responsibilities for school, students, and staff, is provided. (Author/AM)

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ED111911

Student Behavior, Rights and Responsibilities and the Fair Administration of Discipline

Conference Proceedings

April 1-2, 1974

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PREFACE

The Program for Educational Opportunity is a university-based institute designed to assist school districts in the process of desegregation. The Program, based at The University of Michigan, was established by the U.S. Office of Education pursuant to Title IV of the 1964 Civil Rights Act.

Besides providing in-district services on request and without charge to public schools in the state of Michigan, the Program annually conducts a series of conferences. During the winter and spring of 1974, five conferences and a School Desegregation Forum Series were held at The University of Michigan in Ann Arbor, covering topics of critical importance to school board members, administrators, teachers, students and community. These conferences were entitled:

I. Approaches to Developing Models for Professional Growth and Development

II. Diversity in Educational Opportunities

III. Student Behavior, Rights and Responsibilities and the Fair Administration of Discipline

IV. Beyond Desegregation—the Educational and Legal Issues

V. Teacher Training Institutions and the Need for Multi-Cultural Education

VI. School Desegregation Forum Series

Due to the close relationship of preservice and in-service education the proceedings of conferences I and V have been combined so the reader may gain a closer insight into the preservice education of teachers and the rationale for in-service education and how to best achieve it. These proceedings are entitled *A Look at the Education of Teachers: Preservice and In-Service*.

The School Desegregation Forum Series was held once a month for six months. Topics covered included an historical look at school desegregation, the status of desegregation in Michigan, recent and pending desegregation cases and their implications for Northern schools, research in the area of desegregation, desegregation as a national policy and the role and actions of the school superintendent in desegregation. Papers from this series have been incorporated into appropriate conference proceedings. They are identified within each volume.

The Program has transcribed or received written copies of the major presentations from each conference and is making them available to anyone interested in the pursuit of equal educational opportunities.

To the consultants from professional associations, governmental agencies, university communities, and practicing educators and attorneys, the Program expresses its appreciation for their sharing of experience and dedication to the proposition of equal educational opportunity.

Special appreciation is due Dr. Wilbur Cohen, Dean of the School of Education, for his continuing interest and support of the Program. Recognition is also due the Planning Advisory Committee members for the respective conferences, who provide invaluable technical and practical insight. They are identified in the proceedings of each conference.

Finally, contributions of the below listed individuals responsible for the planning and coordinating of the conference series and these proceedings are acknowledged.

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INTRODUCTION

One of the most prevalent problems encountered by the Program for Educational Opportunity is the conflict surrounding student rights and responsibilities in public secondary schools. The conflict has particularly onerous consequences in desegregated settings as reflected by the grossly disproportionate rate at which minorities are suspended in contrast to their white counterparts. The conflict, however, is equally as serious in racially homogenous districts where differential effects may be detected along national origin, sex or socio-economic lines.

A recent congressional investigation highlights the disproportionate suspension rate in the nation's twenty largest school systems.

City	*% Minority Enrollment*	*% of Suspensions (Expulsions) Minorities*	*Total Number of Suspensions (Expulsions)*
Cleveland	59.9	70.8	11,634
Dallas	49.4	68.0 (92.9)	— (42)
Houston	54.6	71.0	9,150
Memphis	58.0	70.2	6,555
Miami	51.6	67.2 (89.6)	6,812 (135)
New York	64.4	85.9	19,518
St. Louis	69.1	68.0	2,799

Similarly, a state-wide tabulation of data by the Office of Civil Rights, Department of Health, Education and Welfare, revealed that 80,023 Florida students were suspended or expelled during the 1972–1973 school year. Minorities were suspended at approximately twice their enrollment representation of 23%.

Such data dramatically demonstrates the need to foster an integrated educational environment in which discipline, when warranted, is administered in a fair and non-discriminatory manner and students are encouraged to demand procedural due process and exercise all substantive rights, provided they do not disrupt the educational process. The Program for Educational Opportunity through a variety of activities including this conference is attempting to foster such an educational atmosphere; an atmosphere which all but a few school districts have failed even to approach, as is apparent upon further definition.

A truly integrated school environment is one in which every student, regardless of socio-economic status, sex, race, or national origin is encouraged by a multi-racial staff to participate fully in all curricular and extracurricular activities and is made to feel welcomed as an equal member of the school. The fair administration of discipline represents the creation and maintenance of a non-disruptive learning environment by the evenhanded application of a set of pre-published rules fair in nature and reasonably related to valid educational objectives. Such administration is characterized by the consistent provision of like sanctions to different individuals on the basis of similar violations under comparable circumstances.

To facilitate progress toward such an environment, the conference explored three major themes. First, conferees examined the issue of *Fair Administration of Discipline* through presentations on the "Psychological Perspective" and The Politics of Administering a Discipline Code" by William Morse of The University of Michigan and Emerson Powrie, Deputy Superintendent of the Ann Arbor Schools, respectively. Panels composed of representatives of teachers, principals, school boards, community persons and students added their perspectives, a few of which were received in writing and are incorporated in these proceedings.

The second portion of the conference was devoted to the consideration of various substantive and procedural issues under the general rubric of *Present Scope of School Authority and Student Rights,* a topic addressed by Eugene Krasicky, then Assistant Attorney General of Michigan for Education. A variety of consultants surveyed specific substantive and procedural issues, including: student records, attendance policies, student publications, courts and schools, special education, alternative schools, due process procedures, fact finding techniques, sufficiently of evidence, and police activities in the schools.

Attention focused during the third segment of the conference on *Educating the School Community About School Authority and Student Rights* with Robert Potts, then Human Relations Ombudsman in the Ann Arbor Schools providing the rationale. Three models for accomplishing this objective were introduced and are described in detail, one through school policies, another via the curriculum and a third by means of in-service training.

In the interest of providing a ready reference for school students and staff, a comprehensive appendix is provided which incorporates selected state and federal constitutional and statutory provisions, state attorney general opinions, significant judicial decisions and state department of education guidelines on matters of student rights and responsibilities.

Two additional reference items deserve mention. The Program in conjunction with the Saginaw Student Rights Center has published an extensive legal-educational bibliography on Student Rights and Responsibilities. Finally, and of particular note, Junious Williams, former Director of the Saginaw Center and frequent Program consultant, has prepared with John Hansen, formerly class principal at Huron High School in Ann Arbor and now Principal at Dexter High School, a video tape simulation of a school disciplinary hearing that demonstrates appropriate hearing procedures and due process requirements. Both of these reference materials may be obtained by writing the Program for Educational Opportunity.

C.B.V.
September 30, 1974

PART I

THE FAIR ADMINISTRATION OF DISCIPLINE

THE FAIR ADMINISTRATION OF DISCIPLINE: A PSYCHOLOGICAL PERSPECTIVE

WILLIAM C. MORSE

Dr. Morse is Professor of Education and Psychology, School of Education, The University of Michigan.

We are currently in the midst of a total renovation of our concepts of individual freedom and individual rights. The extent of this reassessment ranges from doing your own thing and the freedom to use drugs to the right of an individual to suicide. Some youth and adults espouse the right to do nothing. The changes have even required the invention of new labels for old behavior; stealing has become a Robin Hood rip-off; extra-legal defiance has become confrontation.

Whenever there is social flux in the area of freedom and conformity, the situation is most painfully evident to those who are responsible for the process of upbringing, parents and teachers being prime representatives. The written and unwritten "rules of the game" change faster than they can be recodified. Nobody is sure "where it is at." This conference is about one specific example of this broad social process of upbringing. It is the search for a new and humane way to deal with discipline. Because we represent the serious students of this complex problem, we need to go back a bit and recognize how fundamental a matter we are engaged in when it is set in a psychological perspective. Erich Fromm discusses what we are about in his new book, *The Anatomy of Human Destructiveness* (New York: Holt, Rinehart & Winston, 1973). It is man's nature to seek out his limits. He is impatient in looking for possibilities to liberate himself. The rational ability of man seeks to extricate himself from the fatal web of circumstances he has created. In effect, it is the desire and effort to create a better society. At all odds, the human being attempts to make sense out of life. This quest to understand is currently evident in the queries of all ages—young children, adolescents and adults. The desire is to achieve a better and more sensible quality of life whether the place is on the assembly lines or the school halls and classrooms. Somehow the regulations should make more sense.

From the psychological point of view it is the oppressive nature of certain aspects of the present culture which has spawned certain of the violent reactions. Granted, there are those who exploit the conditions for escaping responsibility, enough is out of joint that those who feel the greatest concern for others are driven to action. This is a part of our cultural heritage: historical evolution is the very root of our culture. The struggle is always the compromise between one's personal desires and rights over and against the social demands resulting from living together in mutual interdependence as we so obviously are. In this highly interrelated society, everything one does influences everyone else to some degree. John Donne's "no man is an island unto himself" was never more evident. How much money I get for what I do, how much taxes I pay, how I drive a car or use the natural and social resources is more than only my own personal business. An Ericksonian sense of industry of one of us (the investment in doing some useful work) has an impact on all of us. With our feeling of power of influence over this complex system having so atrophied, we lose hope over any control of our individual destiny. There is a vast appeal for all ages to move out of such confused total society establishment and try to find a better life in a mini-society, isolated from the whole, through subgroups, communes and alternative schools. If we remember that there have always been such efforts and that they have sometimes influenced the whole, we can keep an historical perspective.

There are two primary ways to approach the current ferment about freedom and conformity as illustrated in the topic—the fair administration of discipline. And we will need some of both approaches to accomplish much, but we must achieve the right balance. The first way is the legal approach [Rights of Children—A Special Issue Part I. *Harvard Educational Review*, Vol. 43, No. 4, November, 1973. See also the pending revision of the State of Michigan Mental Health Code]. We are immersing ourselves in a legalistic-advisory society. Many psychology students are now looking at law as the key social function replacing psychological processes. We must, of course, always have the protection of a legal code. But it is just because of our inadequate attention to the psychological issues that we have had to convert everything into a legal issue.

The second major approach is by way of psychology, the study of ourselves, how we actually can learn to get along together, and what is a more appropriate way of utilizing authority than authoritarianism. We have not been very astute in these matters in the past, nor are we at present. There are still school personnel trying to function like those of the 1890's, mandating character through rules and dicta. One never resorts to a legal court to resolve a dispute unless we have already failed in the court of living where issues should be mediated. The less we find interpersonal solutions, the more we must resort to legal interpretations and mandates. The search for interpersonal accommodation through mutual participation is the process we should use to the fullest extent. Orwell, in *Animal Farm*, describes how some are "more equal' 'than others in the legal sense. Cottle [Cottle, T. J. "Parent and Child: The Hazards of Equality" taken from *Saturday Review*, February, 1969, pp. 16–19; 46–48], taking the psychological direction, makes it clear that the lack of certain equalities, such as between a parent and child, does not mean we are less close as human beings. In fact, as he says, parent and child are at once both closest and yet furthest apart. So what we are seeking in the pages which follow is not fair discipline in the legal sense, but fair discipline in the psychological sense.

Actually, there is no place for the term "discipline" in schools at all, in the traditional use of the word. Redl [Redl, F. *When We Deal With Children*. New York: Free Press, 1966] has presented a clarification of the many meanings of the term, and what "fair discipline" means is a high quality process of socialization. What we are doing as agents of "discipline" is to try to help children and youth learn essential social mores, to assist in acculturalization, to develop a sense of person and identity related to the social whole, to work out a set of social values. In short, the aim is the ancient one of how to become a citizen of the republic. The core of this process used to be a function held almost exclusively by the family as a primary group. Now much of the upbringing is left for a secondary group, the school. And it goes hard. Sometimes it would appear we do not always understand what we are about.

It would be interesting to ask each of us what our "laws of how humans learn" are in these matters. How do we think we can bring about desired changes in children and youth? Schools sometimes act as if they believe in the "death penalty." They expel and they punish. A pupil skips so the school expels him to teach him to stay in school. It is so easy to overdo. If he skips again, extend the period of expelling. We depend so much on rules in school. Rules are soon considered sacred writ. To ask "why" of a rule is to insult the school establishment. We line up, we are quiet, we do this and not that. Why? *Because*, that is why! To further complicate the matter, there is a great variance in individual youngsters, various ages and various natures. We do not all view a situation the same way. We do not all benefit by the same learning experiences. Exclusion can, once in a great while, be an effective learning experience, but not often.

Thus our topic moves from fair discipline to how do we best arrange for learning to develop and accept reasonable codes for social living in a democratic society. It is well to remember that demoncratic society worries —or at least should worry—more than other societies about the rights of self and others. Contrast our continual questioning with the arbitrary, universal and intensive indoctrination depicted for Soviet and Chinese children [Bronfenbrenner, U. *Two Worlds of Childhood*. New York: Russel Sage Foundation, 1970].

Though in truth the youngster's peers are often the most potent in influence, the delegated upbringers are adults. Adults have special difficulties in times of rapid change. They must resist living in the past when the sense of self rights was submerged or "disciplined" out whenever possible. And they must resist a cop out by acquiescence—like becoming adolescents themselves and, therefore, of no value to provide needed stability. It is, of course, true that psychological maturity and age are not always highly correlated. Some educators try to out adolescent the adolescents. It is easy for adults to be as immature as we accuse youngsters of being.

Specifically the issue is, how can we foster democratic social development through our schools? The real crisis of our times is not in reading skill though there are many who can't read: the crisis is attitudes, social relationships and concern for each other. Of course, we want the best of both the academic and feeling worlds, and the school is obligated in both areas. It is well to remember even when the home does do its upbringing job, this alone is not enough in our complex society. In a time of social breakdown and metamorphosis, we need the help of all institutions for it is very difficult to grow up to a reasonable maturity in such a social laboratory as children and youth live in today.

We start examining the school's role by recognizing that our base as educators has changed drastically. The reason the school enterprise was able to behave as arbitrarily as it has was because of certain beliefs which were widely accepted in society. Schools were seen as melting pots, the channel for minority groups of various extraction to use in being absorbed into the mainstream of American life. School was seen as the source of all important learning. One "learned to earn." The more education the better the job. If you don't graduate from high school, you have no future. Such concepts made the school a necessity, and put pressure on parents and youngsters to adjust to the school enterpise however it was conducted. These beliefs allowed the school to become alienated from pupils or oftentimes arrogant in function.

Coleman, among others, has pointed out how sharply all of this has changed in the span of a few years. [Coleman, T. S., "The Children Have Outgrown the Schools," *Psychology Today*, Vol. 5, No. 9, February, 1972, pp. 72–75]. We have evolved a different set of myths and the old ones are gone. Schools are no longer the gateway to information with the vast presence of mass media. Children learn as much or more out of school as they do in schools. The schools have become a less critical service organization of society but they should still function to help youth become part of productive society. Kagan [Kagan, J. "A Conversation With Jerome Kagan," *Saturday Review of Education*, April, 1973, pp. 41–43] has said very strongly that schools should provide a model for youngsters as they learn to participate in a democratic society. Court cases have ruled that a job requirement cannot include a diploma unless it can be proven relevant. To put it bluntly, like the crash of '29 which led to the great depression, educational stock has collapsed and with it has come the educational depression. No one has jumped out of a school window as some in despair did at the financial depression, but the students have rebelled and many teachers would like a way out.

When we think of discipline then, we are in the very center of the schools function—reasonable socialization efforts. The choice is clear: we can move toward more repressive measures and work from a base of arbitrary authority trying to hold the line, or we can aim for active participatory involvement toward a new educational order. We have had little actual help from the rabid critics of education who make a living on unrealistic invective. But Rogers [Rogers, C. R. *Freedom to Learn*, Columbus, Ohio: Chas. E. Merrill, 1969] and Silberman [Silberman, C. E. *Crisis in the Classroom*, New York: Vintage, 1971] which are solid approaches have had less attention but do show clearly the problem and process we must be about. Those who think schools cannot do anything significant should examine the research evidence that such is not the case found in *Psychological Impact of the School Experience*. [Minuchin, P., Biber, B., Shapiro, E. and Zimiles, H. *The Psychological Impact of the School Experience*. New York: Basic Books, 1970.]

As we look about us are spots of change but the alternative programs have not cut deep into the mainstream. Actually, the alternative programs often take the pressure off so that the establishment can go as before in the mainstream. Silberman makes it clear that we must work on the fundamental varieties of education if we are going to do anything significant. He sees these as the *time* within the school walls which is still demanded, the *compulsory nature of the enterprise, the evaluative-sorting* out of success and failure schools indulge in and the fact it is *adult managed* almost exclusively. Sarason [Sarason, S. B. *Culture of the School and the Problem of Change*. Boston: Allyn and Bacon, 1971] has demonstrated that teachers seldom give any participatory rights to pupils in the way they go about creating the constitution of the classroom. Furthermore, since there is no participation without responsibility, many students prefer to be outside in order to object to the arbitrary order of things rather than get into the hard work of participation for change. What can we do from a psychological stance to produce a viable interaction pattern for a new educational order? Are there some inherent processes and rights on which we can build rather than resort to coercive methods?

1. Socialization is not the result of a law, a code or a course. it is a *total commitment*. It cannot be marginal or be done by a new set of experts for it requires effort all along the line. When the present upheaval was first evident, I was invited to be a listening consultant to the administrative staff of a school district. After two hours of discussing problems and laments, they asked for comments. The proposal I made was to spend a minimum of one-third total staff resource in affective work leaving two-thirds for academics. While I thought it was not enough for the social problems emerging, it was a start. There would be a redeployment of resources to work out the critical problems. The proposal was too much. It was decided to go on with business as usual with no concerted effort to meet the impeding upheaval though the signs were clear. Will your school dedicate the necessary effort or do they still believe in instant character development and change by punishment? Will it be a clear choice for more internal controls or stay with the belief in external management?

   What this means is that every pupil and every teacher has a right to a system in which the social process concern is legitimate and where there is conscious attention to what is going on in the attitudinal as well as cognitive realm. Our state superintendent says that self-concept, self-esteem and attitudes are a co-equal part of schooling. We are only asking the legitimate equal time and sophistication for social learning.

2. We must spend time getting to know ourselves and the others directly concerned with the school: teachers, pupils and parents. For example, this generation is a new breed, especially at adolescence. To the normal upsetting growth processes at adolescence have been added new deviances—aggression without a target, fear of commitment, quest for relevancy narcissistically interpreted, and the loss of a sense of industry. As Brunner has pointed out, work has replaced sex as the source of neuroses.

   Teachers will have to change their ways more than at anytime in their careers. The National Education Association survey [NEA, "Preliminary Results From An Assessment of Teacher Needs," Washington, D.C. September, 1972] of teacher needs shows that teachers want help with problem pupils, with motivational malaise, with making schools more individualized and with the values and attitudes expressed by youth today. Administrators are on the hot seat. [Morse, W. C. *Classroom Disturbance: The Principal's Dilemma*. Arlington, Va.: Council for Exceptional Children, 1971].

   The adults in the school, being a minority group, need to really understand each other. There is no room for amateurs in this child upbringing group. Teachers are the only trained professionals with which the child has to interact since no training is required for parenthood. Staff meetings, so often mechanical, have to generate awarenes and interaction. Without this there can be no trust or coherence in the system. There are scales which can be taken, such as the *Attitudes Toward Human Nature Scale* or *Teaching Style*. Aspy's book [Aspy, D. *Toward a Technology for Humanizing Education*. Chicago: Research Press, 1972] has many ways to explore the new teaching role.

   Parents have greater anxieties in raising their children than ever before. They press for school recognition and worry lest their children lose out. Many of them want an in-relationship to their schools. What are their attitudes toward school? What do they want the school to accomplish?

   Unless we study each other, our roles, fears and hopes, we cannot formulate viable policies, and the shambles will continue. This mutuality is especially critical in rules and regulations about behavior. There can be no effective social policy without the participation of these three groups. It is also important to remember that there are a few from any segment—the 1%—who can create such issues that we lose perspective. We are designing a total social program and not one warped to handle the 1% who are virtually impossible to work with in any case. If we have a plan satisfactory to the vast majority, the few cannot destroy it at will.

3. We must know how well conditions are in each room and each whole school. There are many attitude surveys to indicate the morale, some we have used here in work with the Middle Schools. As a general thing, we know that some 85% of our children and youth should move along with normal growth patterns; 12% will have crises with more or less complicated difficulties; and some 3% will need intensive support, with a very few who cannot utilize the public school even with special program provisions because they need much more help. The best immunization for a healthy school is a good program, suited to the needs of a vast majority of the children. But, when you study the actual condition, what you find is what you've got. Are you planning for what you've got or what you would like to have? A discipline program is not grafted on a school. It is infiltrated into the whole system. A survey can point out the specific condition. It may mean a redesign of parts or a total program depending upon the analysis.

4. The special services must be realigned to take care of both crisis and chronic problems so that special adjustments needed in our times can be extended to the utmost. [Morse, W. C. "If Schools Are to Meet Their Responsibilities to All Children." Washington, D.C.: Association for Childhood Education International Reprint from *Childhood Education*, March 1970]. The aim is not expulsion but provision for those who would overload the system. Remedial assistance for high risk students, and counseling must parallel the overall plan or "discipline" problems will mutate faster than a correction can be applied. It is well to remember that there are pupils who bring in their problems from outside just as some students find abrasion in school itself which generates a total life problem. Referrals to community services are often essential. But again, the few bright spots have shown that even severe delinquents can be helped if the school is willing—Montreal and California both have experiments in this regard. A population of "losers" is not necessary. [Ahlstrom, W. M., Havighurst, R. J. *400 Losers*, San Francisco, Cal.: Jossey-Bass, Inc., 1971]. On the other hand, *400 Losers* shows that offering work as therapy has limited potential.

5. The evolution and continual reworking of individual and school goal statements is required. What is the purpose of the place? As a student, why am I here? The book *Teach Us What We Want To Know* [Byler, R., Lewis, G., Totman, R. *Teach Us What We Want To Know*, New York: Connecticut State Board of Education, Mental Health Materials Center, 1969] could be a cornerstone. The school is accountable for relevant skills and proficiencies, for self-develop-

ment, for teaching how to make independent decisions, for facilitating social skills.

6. This leads to a process conscious school which embodies a code describing the rights and responsibilities of every member of this social microcasm. There is nothing sacred which cannot be re-examined, studied, discussed and evaluated together as decisions are reached. This is a social living code, not a discipline code. Both pupils and teachers have this right to a process conscious school. Having worked in an institution for seriously disturbed youth, I know even there trust can be fostered. The operation can come to be known as fair, just and reasonable. The place can care and can be concerned about you. This is the right to a socially accepting climate needed for children and adults. It is open, responsive and listens to your ideas. Again there are models [Barth, R. S. *Open Education and the American School*. New York: Agathon Press, 1972; Rogers, C. R. *Freedom to Learn*. Columbus, Ohio: Chas. E. Merrill, 1969; Redl, F. *When We Deal With Children*. New York: The Free Press, 1966; Knoblock, P. and Goldstein, A. *The Lonely Teacher*. Boston: Allyn and Bacon, 1971].

   Now it is evident that we will have to learn new skills, since many of us resort to rule by role rather than by an analysis of the situation as related to basic concepts. Of course we will test the limits of any design we create but then that is the way of life. We teach by the laboratory method: the school and its consistency is the social learning laboratory.

7. There is another basic right for students and teachers—the right to rescue. Every school needs a crisis clinic, a street corner mental health rescue mission, if you will. The social system is always at the crunch. We need not punishment, not threat, not a punitive set. Newman [Newman, R. G. *Psychological Consultation in the Schools*. New York: Basic Books, 1967] has described the service connected with the ongoing reality of the school. One nearby junior high has a system to deal with problem behavior which allows for no rejection but provides a place to work out difficulties if there is tension. With children especially, one strikes while the iron is hot or the malleability will disappear.

   Further, the evidence revealed by the effort to solve the problem is fed back to get System Change, for as Sarason says, "systems resist alteration" [Sarason, S. B. *Creation of Settings and the Future Societies*. San Francisco, Cal.: Jossey-Bass, 1972]. All of this calls for a new breed of administrators, teachers, counselors, crisis teachers and advocates.

8. The student has a right to adults who are skilled in mediation and communication at all levels of the institution. We have found Redl's Life Space Interviewing the critical skill [Long, N. J., Morse,

W. C., Newman, R. G., (eds.) *Conflict in the Classroom: Education of Children With Problems*. Second edition, Belmont, Cal.: Wadsworth Publ. Co., 1971]. Both verbal and non-verbal communications must be appreciated. Life Space Interviewing is a skill for working through affective problems for "on the line" workers. Otherwise, personnel resort to primitive reaction or moralizing neither of which gets any place today.

9. The studies on evolution and maintenance of social codes indicate the critical need for figures for indentification, persons who embody the necessary values. There is no other way. Are the school adults reasonable models for genuine behavior? Who are the peer models of prestige—the pushers or desirable peer leaders?

10. The social process requires the explicit development of the affective aspects of the curriculum, especially to fortify the 85% who are making normal progress. This is done in several ways. ***Intrinsically,*** values are identified and clarified and the normal opportunities for feeling situations are utilized [Jones, R. M. ***Fantasy and Feelings in Education***. New York: Harper and Row, 1961]. Problems can be made subject matter of the curriculum. Social studies can survey "skippers." Government classes can be the monitor of the school government. Again, teach us what we must know. Illich has proposed health, shelter and welfare as the real areas of study. ***Explicitly*** there are now many curricular methods from preschool through high school where attitudes and values are the core [Bibliography on "Affective Education" gathered by Morse, W. C. and Munger, R., University of Michigan, School of Education is available on request]. *Externalization* of feelings can often be accomplished through creative experience, art, music, drama and dance. Play itself is the key resource in London's nurture classes. [See Rhodes, W. C. and Tracy, M. L. *A Study of Child Variance: Vol. 2—Interventions*. Chapter XI, Ann Arbor, Mich: University of Michigan, 1972]. The peer group life must be utilized to enhance socialization. Bronfenbrenner demonstrates that, in contrast to the Russians, our children grow up with a contrasting peer and adult code while the Russians have a unified combination. There is no chance to control the peer group phenomenon but adults can recognize its power and work with and through it. We know of peer codes, roles, contagion in groups, affiliation needs and the like. Both through gaming and group work whether it be Glasser's or some other, [Glasser, W. *Reality Therapy*, New York: Harper and Row, 1965; ***Schools Without Failure***, New York: Harper and Row, 1965] it is possible to relate to the peer group.

In conclusion, we have been depicting a process of change in schools which converts this secondary group to, in part, a primary group with much deeper human relationships. To humanize the school, the school's "discipline" code no matter how fair it is, is but the top of the iceberg. The challenge is to engage in the basic process of socialization, a process just as relevant for adults as for kids. Beyond the legal question of a legitimate set of rules and due process is the psychological question of how can we better learn to live together no matter what our age. This is the real interpretation of fair administration of discipline.

THE POLITICS OF ADMINISTERING A STUDENT DISCIPLINE CODE

EMERSON F. POWRIE

Mr. Powrie is Deputy Superintendent of the Ann Arbor, Michigan Public Schools.

In a recent issue of the *Detroit Free Press* in the column by Sydney Harris, the following cryptic definitions appeared:

> A conservative is commonly a man who throws a 25-foot rope to a person drowning 50 feet from shore, and shouts encouragement for him to swim the other half for the good of his character. A liberal, on the other hand, throws a 50-foot rope to a person only 25 feet from shore—and after throwing it, lets go of the other end and walks away to do another good deed.

The politics of administering a student discipline code is personalized, humanized and emphasized by such items as the suspension for the semester of a school board member's child, the attempt of a school board member to take over the administration of a riot, the insubordination of a group of teachers to return a child to class when ordered or the suspension of the son of one's secretary. If, as Webster says in one of his definitions of politics, that it is "the art or science concerned with guiding or influencing governmental policy," we have a significant and critical job on our hands. The ramifications of administering such a code with fairness and responsibility are sometimes overwhelming.

Here in Ann Arbor we have had a formal Discipline Code for the past four years. The present code was adopted by the Board of Education on November 1, 1972. This code and its method of development has been controversial since its inception. The previous code, that is, the one of September 1971, had been developed by a representative committee which was very badly divided between people with a "law and order" philosophy and those with a student rights philosophy. The code adopted tended to have the more conservative point of view. I cannot speak to the effectiveness or management of this first code as I had little direct relationship with its administration, even though I was on the development committee that produced it.

The present code, the one adopted by the Board of Education in November of 1972, also had an interesting and unusual genesis. The Superintendent, at the Board's direction, appointed a representative committee of students, parents, teachers, and administrators to study the previous code, modify and amend it, and proceed to send the Board a new or modified code. The Board was not satisfied with the work of this committee and established a three-man committee of Board members to develop one satisfactory to the majority group on the Board. This was done. Needless to say, this procedure did not please some groups in the community. Thus at the very beginning, the administration of this new discipline policy was beset with difficulties. It is within the period of these two years that I have had a direct relationship to the management of this code and from this period of time that I must speak today.

The present discipline code of the Ann Arbor Public Schools has the following statement of purpose:

> A basic essential to the educational process is an environment which is conducive to learning. Students cannot learn and teachers cannot teach when chaos, disruption, and fear exist. The school system has a responsibility to protect the rights of the student to learn and the teacher to teach, as well as to insure the proper operation of the school. The behavior of a student is the joint responsibility of the school, parent, and pupil. To fulfill the school's responsibility, the Board of Education, its administrators, and staff, therefore, accept it as our duty to (1) provide a school environment where learning can take place and (2) protect the rights and privileges of all members of the school community.
>
> This document is not designed nor is it intended to be used to deny students a happy, healthy school experience, or to restrict the realization of their full potential. It is, rather, aimed at dealing with those incidences and persons who by their acts threaten to be, or are, harmful to other persons or property or are disruptive of the learning and school environment.

There is really little that a person can disagree with in this statement of purpose as such, but administering the policy with all of its complexities makes it much different in its impact on the students involved.

The administration of a discipline code from the vantage point of a central administrator is primarily with four groups. These are the Board of Education, the administrators in the schools, the rest of the staff, and, most importantly although usually indirectly, the parents and students involved.

During the 1972–73 school year Ann Arbor was recovering from two or three years of turmoil and confrontation in the schools, particularly the secondary schools. The preceding year had been one of extreme negative behavior in the junior and senior highs. The Board of Education took a very firm position on strict enforcement of the discipline code. This attitude was solidified because of two near-fatal stabbings and two days of a mini-riot in one of the two senior highs. All of these factors led to orders from the Board to administer the policy verbatim. Extreme regulations were adopted dealing with weapons, searching students and lockers, locking doors and checking people in and out, etc. Teachers were given special assignments. Tension was great.

This type of atmosphere is not conducive to good education. Naturally, students are upset. Staff members are tense and irritable. Administrators are frustrated and discouraged. The Board of Education is harassed by the public and a very negative climate is established. In this setting some Board members tend to get directly involved. This can only lead to more problems and greater misunderstanding.

This year we have worked to help the Board accept the on-going operation of the policy. In an executive session early in the year, we discussed the reports of the various schools on suspension. Interpretations of the reports and philosophies of the various groups were reviewed. New guideline were developed and as a result, this year has been much smoother than last in the relationship with the Board in this area.

The man in the middle of the discipline policy administration is the principal of the building along with his assistants. They have the direct job of enforcement and judging. The building administrator is considered to be the chief disciplinarian and enforcer of the discipline policy. At the same time he is called on to sit as a "judge" in the hearings which are a part of the process. This type of dual responsibility is most difficult and most unfair. In other areas of society we do not ask the judge to go out and capture the alleged criminal. Our administrators are not trained as lawyers, but these days, not infrequently, students appear for hearings with their own lawyers. Just the other day I had a review of a case, not a hearing, and the young man involved brought *two* lawyers into the case. This situation needs to be improved.

Another serious problem of the building administrator's responsibility for the discipline code is the time factor. Our administrators are spending an undue amount of time being policemen and judges instead of on the primary business of educating children. This is an aspect of life with a formal discipline policy which must be improved or reoriented.

Our staff members, teachers and others, also have difficulty with the administration of the discipline policy. Here again we have a group with diverse philosophies and attitudes about methods of living with student behavior and all of its ramifications. In the past, some teachers have dismissed the idea that they had any relationship to the general management of the behavior of students in the school. The mechanics of the code are an anathema to some teachers. This is particularly true in the aspect that a particular act necessitates a particular punishment. A very few teachers take the position that a child who creates a problem in the class has to be dealt with by someone else, as it is the teacher's job to teach.

We are in the process this year of developing a central council and building councils to deal with the whole issue of student behavior. This idea was generated in part as an item in the Master Contract between the Teachers' Association and the Board of Education. At the present time the Central Council is made up of representative members of the various employee groups. At the moment, parent and student representatives have not been appointed. They will be. It is expected that the councils in the schools will have student and parent representatives from the start.

As all staff members become involved in this type of cooperative effort the management and the effective relationships of the groups should improve.

At last we come to the *students* who should probably have been first because they, after all, are the most important ingredient related to a discipline code or any other code or regulation in a school.

The details of the policy tend to be very mandatory and these are often resented by the students. Some issues are not seen as problems by some students, but rather as a right—smoking and marijuana, for example. Another section looked on as personal privilege is that of being in halls, etc., during class periods. This, in the discipline policy, is loitering. Many students and parents agree with the discipline policy as long as it applies to others but don't want it applied to them. Often cases classified as assault are seen by the student and his family as self defense or having fun.

Probably the chief complaint about the policy is the fact that it is applied to one group or type of person but not to another.

To date this year we have attempted to modify long-term suspensions under the policy by use of the review process whenever possible. This is different from the appeal process because it makes possible the modification of the penalty without having to deal with the technical legalities of a formal appeal. This has been very helpful in dealing with numerous cases. The review is requested by the school authority rather than the student. The appeal has to be requested by the student.

Administering a discipline policy is certainly a complex task. Student rights and staff rights must be protected. At times, these two circumstances are almost incompatible. Somehow we must develop a discipline code which is always fair to the rights of the student. This demands responsibility on the part of the students and staff. We have to put the whole process of discipline into a setting where it becomes the means to the end of good school management and programs instead of an end in itself. This is a challenge to all of us—students, parents, staffs. administrators and Boards of Education as well as the community working for fairness and justice in our personal relationships in a school.

THE FAIR ADMINISTRATION OF DISCIPLINE: A TEACHER'S REACTION

JOHN ELLIOTT

Mr. Elliott is Executive Secretary of the Detroit, Michigan Federation of Teachers.

On the matter of students' rights and responsibilities, I believe that students indeed—any individual ought to have certain rights without question. These rights cover two broad areas:

1. Everyone ought to have the right to participate or designate a representative to participate in the affairs that govern their daily life.
2. Everyone directly involved in a dispute should have the right to have their point of view heard and also a right to hear and question directly, any and all individuals involved in the dispute.

On the matters of governance, participation should involve full utilization of the democratic process, i.e., election of a representative of the individual choice, full debate on any issue with a vote to decide the issue and rights of appeal where necessary.

Such a unit of governance ought in some reasonable manners, reflect the total composition of the body being governed. There ought not be opportunity for total repression of a minority by a tyrannical majority .

Clear rules of operation in the form of a constitution, bylaws, and general laws ought to be provided for and easily accessible to all individual members of the body.

In spite of governance, good or bad, disputes or disagreements or misunderstandings are inevitable and where one individual has a degree of control or authority over another, disputes, disagreements, misunderstandings and abuse will occur.

In such instance, the accused party ought to have full hearing representation and appeal rights similar to those provided for in any good Union contract. Broadly speaking, they should include: 1) a hearing at a time and place convenient to all parties; 2) procedure that is reasonably understood by all parties and known to them before the hearing; 3) immediate right to have all charges and/or knowledge of related materials in writing before such hearing; 4) the right to face and question accusers with rights of rebuttal where necessary; 5) right to adequate representation of choice (where the accused is a minor, representation should be through parent or guardian; 6) right to appeal to highest level possible which should include appeal to a neutral party.

The foregoing ought not be just student rights, teacher rights or the exclusive bailiwick of a select group. Such rights ought to be available to all.

Obviously, what has been said is put in its simplest form. Nothing is ever utilized in its purest or simplest form. But schools ought to be the guideposts for teaching young people to, in a meaningful fashion, take active part in the day to day affairs that affect their lives. Schools must encourage young people to grow in our society—not repress them.

STUDENT RIGHTS: A PRINCIPAL'S VIEWPOINT

ROBERT E. HALL

Mr. Hall is Executive Secretary of the Michigan Association of Secondary School Principals.

I am glad it was made clear that even though I do represent the Michigan Association of Secondary School Principals as Executive Secretary, there are times such as this that I speak as an individual, not in toto. What I have to say would not necessarily be the feelings of our Association, or would not be voiced openly for fear of "rocking the boat."

The secondary principal, especially, is now in one of the most precarious positions of any administrator in our public schools. He is damned if discipline is maintained, he is sued for attempting to guarantee equal opportunity for all in his building, he is fired for "doing his job" that is to maintain a balance between students rights, guaranteed by the Constitution, and student responsibilities.

For example, the right to attend schools, is counter balanced by the responsibility to attend daily and punctually. The right to dress "in such a way as to express personality" is offset by the responsibility to dress "so as to meet recognized standards of propriety, health, safety and good taste" and not promote a severe emotional reaction.

Those of us in the secondary schools must realize that difference in age suggests the need for a greater degree of advise, counsel, supervision and understanding than is appropriate for university students. A statement of student rights and responsibilities calls for a delicate balance between assuring students of the liberties while inculcating a sense of responsibility and good citizenship with awarenes of the excesses into which the immaturity of the student might lead.

What I have to say further may not be popular but it is the way I feel and I expect that since we are talking about rights you will recognize my right of freedom of speech and understand that through over 20 years of a principalship in a large school I had to develop a philosophy and also become extremely interested in rights and responsibilities as well as the results of too much freedom too early.

Not long ago an editorial in a local paper condemned the administration of our school and another district close to us. This condemnation was for all to read and understand that the administrators violated constitutional laws and were the reasons for student unrest and probable empty school houses. If we were to blame for attempting to uphold and maintain law and order, and to suspend those students who violate law and order, depriving others from their rights: then we were to blame and should have been replaced by a desk principal who throws up his hands, draws a good salary, and signs into effect all demands from students so as not to "rock the boat," have walk outs, so we may have less education, and in effect become very popular with the students, with the press, and other organizations whose specific purpose is to create chaos and slow the process of education.

There seems to be a current myth that the school society is not responsible to the law, and that somehow the law is the enemy, as are those whom society has constituted to uphold and enforce it. I would like to insist, that all of us are responsible to the duly constituted laws of their school, and their community, and to all of the laws of the land. There is no other guarantee of Civilization versus the Jungle Mob Rule, anywhere.

Must schools, the administration, the faculties, and students be subjected, willy-nilly to such intimidation and victimization whatever their good will in the matter? Somewhere a stand must be taken. (If necessary set a judge in your school for a week.)

I only ask that when a stand is made necessary by those who would destroy the school and the community, let them carry the blame and the penalty.

We can have a thousand resolutions as to what kind of society we want, today, tomorrow, and further into the future; but when lawlessness is afoot, and all authority is flouted, then we either invoke the normal forces of the law or we allow the school to die, as some have already done beneath our hapless and hopeless gaze. I truly believe that we are about to witness a revulsion on the part of the state, national legislature, boards of education, benefactors, parents, alumni, and the general public against much that is happening in education both at the secondary level and the universities today. If I read the signs of the times correctly, this may lead to suppression of the liberty and autonomy that are the lifeblood of a school's community.

I want to make it clear that I am not downgrading those educators and lay-people who sincerely believe that American teen-agers are human beings which they are and that they should be so treated. But, the pendulum of school control is swinging rapidly towards student anarchy and away from student-oriented education.

The movement toward student anarchy is the resulting action of a small but vocal group of students, educators, and lay sympathizers. This "unofficial" group suggests that any form of punishment by high school administrators is both barbaric and archaic. Unofficial spokesmen demand complete student freedom, student involvement in school administration; and in school policy making (the right of the boards of education). Some of these so-called champions for complete student freedom believe that if all else fails, student strikes are legitimate and positive action is to be taken by student bodies. More and more it seems, the liberals are denouncing all forms of discipline, insisting any punishment is evil.

We in the public schools can build a defense against outside pressure groups—that is, as long as the courts will recognize the rights of local autonomy, (which they forget).

Once control of the schools is in the hands of the students, the "whatever is, is right" group will move in and convince the young people that present society concepts of morals and ethics, and educational institutions have outlived their usefulness.

Students are being brainwashed by some of the practitioners of sensitivity training sometimes called T-Grouping, into accepting the lowest common denominator in morals, to become vulnerable to anti-church and anti-family beliefs.

Is the average American less self-disciplined than he used to be? Is he less honest? Less respectful of the law? Less repectful of the rights and property of others? These are hard items to measure. Most people would agree, however, that neither the home nor the church is playing as powerful a role as they once did in teaching Americans to discipline themselves and now the schools are about to be reduced to ineffectiveness. Unless some new force steps into the picture and picks up the load they once carried, lower standards of public morals and ethics would seem to be a natural unavoidable result. Granted that we of the "establishment" need prodding, we can ill afford to give away to lawlessness, to corruption, or to submit to insurrection and anarchy. We can ill afford to capitulate to bigotry and racism of any order. We can ill afford to see our country's moral fiber be eroded by filth and pornography.

The whatever is—is right!, doctrine as I refered to earlier is a movement which expressly excuses and unwillingly condones the perpetrators of wrong and evil. This doctrine makes ethical and moral conduct a matter of health rather thtan personal responsibility. It eliminates the qualities of self-discipline and self-restraint. It permits indulgence in absolute and irresponsible freedom. In other words, this doctrine lets one do what he pleases, when he pleases, and often, to whom he pleases without having to face the music. The members of this cult sneer at the old-fashioned virtues of honesty, integrity, industry, and morality on which America grew to greatness. These people insist that they should have the right to determine what laws of the land they should obey.

Personally, I refuse to take the blame for what is in store for my grandchildren and your younger children, for it is easier to capitulate for fear of "rocking the boat" and it's safe to assume that the people will continue to be amazed by it all—even make feeble jokes—; but many do absolutely nothing to stem the tide. Administrators, teachers, lay persons won't even write a letter to people in positions to do anything about it. To be brutally honest, we can't even count upon their support at the local level as this movement begins to pick up steam in our schools—When I talk about local support, I am also referring to lack of parental control and the fear of losing a "friend."

The controversial "Dress Code," etc. has been given over to schools to solve, and if an attempt to solve it doesn't suit some students it is then tried by the courts as unconstitutional. These problems should be solved at home, not in the schools or courts.

In summary, let me leave you with some serious problems for you to think about as you attempt to provide an educational opportunity for all of your students. The problems as I see them are:

1. I observe a certain sickness in contemporary thought and philosophy, which is alien to what most of us endorse.
2. If any individual citizen or group of citizens after meditation, comes to the conclusion that any law is unjust, and further concludes that if apprehended, he or they are willing to accept the penalty imposed for violation of the act; then it becomes morally justifiable to break the law openly and notoriously.
3. The number of clergy and organizations who have openly and officially participated in deliberate violations of the constituted laws of our states.
4. Faculty members dedicated to disruption, students eager to use gangsters tactics, an academic senate or council whose *main* goal is to erode the office of the principal, guaranteed him by legislative act (P.A. 247), teacher's organizations willing to exploit student unrest, hence the administration is hobbled to the point of impotence and, a few legitimate gripes.
5. Permissiveness fostered by many parents, who are influenced by their children to seek the judiciary. Students brought up in progressive homes and schools where individualism is encouraged and frustrations avoided. Trained in scientific method, they can identify the problems of society, but they cannot see their solutions within the democratic process.
6. Outside groups who are attempting to exert pressure upon public schools to alter their discipline and suspension practices without reasonable and fair deterants for the law breaker who disrupts the educational process.

I want to be clear in conclusion that this is my position- -many will not agree, but I personally like to believe that we used to have rules concerning life, limb, and property; rules governing the department and manners of individuals; and finally, rules defending dishonesty, dishonor, misconduct, and crime. These rules weren't always obeyed but were believed in; and when broken, the rule breaker was brought to justice.

Think about it!

THE POLITICS OF ADMINISTERING STUDENT DISCIPLINE CODES: AS SCHOOL BOARD MEMBERS PERCEIVE IT

VARL O. WILKINSON

Mr. Wilkinson is Deputy Executive Secretary of the Michigan Association of School Boards.

I may be expressing a minority viewpoint as far as those in attendance—but I believe it does express the real concerns of school board members, school administrators and many parents.

I wish to clarify that the Michigan Asociation of School Boards supports well developed and specific policies on student rights and responsibilities. We also agree that school districts have perhaps been too slow in adopting such policies particularly as they apply to student rights and the due process which should be provided. Too, some boards and administrators have been slow to recognize and react to changes which have been taking place in the attitude toward student rights and responsibilities and the accompanying court decisions in this area. But boards do not have an easy task. For example: it is one thing to say that a student has a right to distribute an obscene magazine—but another to *convince* parents of other students that he may have that right.

What are some of the difficult issues facing boards in this politics of adopting and administering these policies?

First, there is extreme community pressures—certain community standards (and these vary from district to district). The recent Gallup poll shows that parents see discipline as the number one problem in our schools—and they let board members know it. Parents and the public expect schools to be under control. In fact, discipline problems or what the public may see as poor discipline in the schools have had a detrimental affect upon millage votes. Perhaps we have not educated parents and public to the more liberal attitudes toward discipline, but this doesn't change what they seem to want done.

Schools are also many times blamed for everything that happens in the community. If there are drug problems, the schools are accused of not taking a firm enough stand or criticized for not expelling students who are involved.

The principal is in the middle—there is pressure from the community—yet he must recognize the rights of individuals—but also the rights of other students. These are fine lines to follow—and because of this I feel that the high school principal's job is about the toughest there is in our schools today.

Secondly, there is teacher pressure. Teachers expect support from the administration and are upset if the principal does not back them. How often do you hear from teachers? "I send them to the office and nothing happens"—and many times there is no basis for anything happening, but they expect it. Many times teachers expect administrators to administer harsher discipline than the offense warrants.

Teacher organizations expound on their support of student rights—yet when one gets down to the classroom teacher with a problem—it isn't necessarily so. Evidence: the number of grievances filed against principals for not fulfilling the contract in supporting the teacher or when a principal, in his good judgment, transfers a student from one teacher to another because he sees that perhaps the teacher is causing the problem. Invariably such grievances are supported by the local union in spite of the liberal position stated by the mother organization.

Thirdly, the board and administration are faced with coming up with effective disciplinary measures. It seems that suspension is about the only thing they have left and the more liberal persons and organizations do not believe this should be used as a disciplinary measure and are attempting to get lesgislation or rules passed to prohibit it. The principal must have something. Certainly counseling should be utilized, but it doesn't always solve the problem. At least suspension gets the attention *of the* parent.

It would be fine if students as well as adults would do what is right because they want to—but this does not always happen and when it doesn't happen, I believe there must be some disciplinary punishment available. How many adults would obey safe speeds if there weren't a law—and even with a law, how many would do so if there weren't some danger of being fined or points received on their driving record? I am sure alternate disciplinary methods would be welcomed by school administrators. Many critics say, "Find some other method." But they are not inclined to suggest what that method should be. Perhaps I'm a pessimist, but I don't see the Utopia happening. We must still give our principals some authority and not tie their hands completely in administering penalties in order to exercise control in the school. Presently, I would say that their hands are about three-fourths tied.

Fourthly, it is inferred that schools delight in depriving students of their rights. Sure there may be a few who do, but this certainly isn't true of the vast majority. In the first place this type of action takes the joy out on the job for any school administrator. They don't want the hassle. Recently, I came across a handbook, *The Rights and Responsibilities for Public School Students in Michigan*, published by the Saginaw Student Rights Center. This handbook takes a completely negative picture of school principals and schools. We do not say students should not be aware of their rights and that schools should not recognize them. Perhaps schools have been negligent, but I believe a more positive approach is possible.

This book challenges students to go at far as they can—to live on the brink, so to speak. And, we all know that this will cause problems whether in school, community or wherever. With the problem faced by our high school principals today, they don't need this challenge of students living on the brink. Again, I don't believe the majority of our principals delight in making it rough on students and a recent survey bears this out. The Gilbert Research Corporation, in a study recently made, stated that a majority of students say that principals and assistant principals have an understanding of their problems. We must realize the principal has a job to do and I believe we can opt for students knowing their rights and work with administrators and principals in assuring that they get them in a positive way. The trouble is there are too many who support students that think anything should go and when the principal puts his foot down—he is depriving the student of his rights or is picking on him.

School boards, principals and other administrators involved in disciplining can't win. They are truly in the middle and some no doubt follow the philosophy that they will do what the community seems to expect until the courts or legislators tell them differently.

To me this is the politics of administering discipline codes which every school board and school administrator faces as they try to operate an effective educational school program.

PART II

PRESENT SCOPE OF SCHOOL AUTHORITY AND STUDENT RIGHTS:

THE SUBSTANTIVE AND PROCEDURAL ISSUES

PRESENT SCOPE OF SCHOOL AUTHORITY AND STUDENT RIGHTS

EUGENE KRASICKY

At the time of this presentation, Mr. Krasicky was Assistant Attorney General, Education Division, for the State of Michigan.

I always like to come down and talk about something controversial. Last week the Michigan Court of Appeals rendered an opinion on dress codes and hair styles. We werent' even aware that they had it before them. Whether they solved the problem or not is a good question but I will talk about it shortly.

I would like to begin by pointing out several things that are fundamental. In Michigan, the legislature controls the schools and it has organized school districts and given them certain powers and duties. Among the powers and duties given to school districts to be exercised by their boards of education is the power to make rules and the power to expel and suspend students. Now those are very important powers.

In the grant of authority to adopt rules the legislature has specified that the rules have to be reasonable, for the authority can only be exercised in a reasonable manner. In the area of suspension and expulsion, the legislature has specified that a board of education may order or authorize the suspension or expulsion from school of any pupil guilty of gross misdemeanor or persistent disobedience or one having habits or bodily conditions detrimental to the school whenever, in its judgment, the interests of the school may demand it.

Roughly, this is the grant of power given to a board of education. Now this is not an unlimited grant of power because what a board does can be reviewed by a court and we are living in a time when courts are very active in school cases. As you know, we have our system of courts in Michigan which we know as district courts and perhaps in your area something your board has done has been reviewed by a circuit court. The dress code that I referred to earlier was reviewed by a circuit court in the southwestern part of the state and the Michigan Court of Appeals last week reviewed what the circuit court did. We have easy access to the courts today, we have a lot of resources, perhaps limited resources would be more fair, legal resources, to bring law suits to test what school boards do.

Some years ago, a suit was brought against a school district to test the expulsion of a student. The record against him was quite bad: a lengthy record of setting fires in school, being late constantly, smoking in school, of causing endless amounts of trouble. He was able to persuade an organization to bring a lawsuit for him to test his expulsion. I don't know anything about his resources or his circumstances, but his expulsion was tested in a federal district court and tested very carefully by a most competent judge who determined after reviewing the matter throughly that the expulsion was warranted. So what you do is subject to review by a court, and therefore you must be very careful about the procedures you employ in these areas because I think you should anticipate that what you do may be tested.

You might wonder what the word "reasonable" means, relative to rules and regulations for the operation of the schools. Last week the Michigan Court of Appeals said that a Lakeshore dress code that specified the hair length of male students must not reach the bottom of the shirt collar and must be above the eyes was unreasonable. Now they didn't really tell us why it is unreasonable and so the decision is not really helpful. The court relied upon another case, which is an unreported case, involving a rural school district. I might tell you briefly that when courts consider matters of this kind, they do so on records that are made before them. Witnesses are called and testify. What they say is subject to cross-examination and a record is built to show what a school board did, why it did it, if it involved the suspension or expulsion of a student, what was his side of the story, what did disinterested witnesses say about this, what did the experts say about it? So it's an amalgam of all this and we call it a record. Then on review, an appellate court reads the record, studies it, and makes a determination whether or not the decision of the lower court was correct. And so we don't have a record in the Lakeshore case. At least, we don't have references to a record so we don't know why Lakeshore adopted a dress code. What problems did it have, if any, that might have led to the adoption of a dress code?

What the court did was to cite verbatim the decision of a circuit judge in an unreported Pine Area School District case in which the judge said things like this: "The facts show that this young man is not a discipline problem to the school, does not create a health hazard for the school, nor does his hair in any way interfere with the school administration, other than the fact that the school does not like the student's defiance of the dres code." Those were the facts found by the judge in the Pine Area case. The court went on to say: "The purpose of a school is to educate and train its students. Any rules and regulations must be for this purpose. The purpose for the hair dress code is to legislate style or fashion and unless it can be shown that this regulation has something to do with establishment, maintenance, management, and carrying on of the public schools, the dress code concerning hair must fall." This was the decision in the Pine Area School District case and it is relied upon as the precedent in the Lakeshore case but we don't really know why Lakeshore adopted a dress code.

So you might ask the question, are dress codes out from here on in, and I can only answer that by saying, I'm not sure. First, of all, this decision can be appealed to the Michigan Supreme Court. There is a twenty-day period for that to be done and this decision was rendered only five days ago, so that period has not expired. Secondly, without knowing the facts in Lakeshore, you really are uncertain as to how to apply it to a school district that might have some need for a dress code and it is therefore uncertain in that regard. However, it is helpful for the school district that wants to know what our courts are doing with problems of this nature for it to make determinations to meet its own problems.

You will find that our office wrote an opinion on hairstyles after reviewing all the authorities. This opinion, made by our office before this case I just referred to was decided, traced all the cases we could find. We concluded that boards of education can make up rules and regulations relating to student hair and dress styles and exclude from school students who disobey such rules and regulations, in the absence of a showing that such rules and regulations are not reasonably related to valid school purposes, including maintaining school discipline, providing an academic environment free from disturbance and disruption, promoting student safety, or other valid educational purposes.

We say this principle applies for *all* rules and regulations of a school district. They just don't have to be in this controversial area of how long hair might be. Every rule and regulation adopted by a school board can be tested in a court for reasonableness and, as I pointed out earlier, we're in a time of great activity in our courts to test all kinds of things. Consequently, we always stress in the advice we give to school boards that they proceed cautiously, fairly, and reasonably in adopting the rules that will determine the conduct of students in their schools.

Now the other side of this coin is what happens when the students disobey these rules? How do you deal with that? And we now talk about suspension and expulsion. We have very little case law in our own state on suspension and expulsion. We had one reported Michigan case involving a student who accidentally broke some windows in a school building. The school authority said, "We're not going to let you back in until you pay for the windows." His father said, "I'm not going to pay for the windows" and the youngster said, "I don't have any money to pay for the windows." The Michigan Supreme Court said, "That youngster has to be readmitted to school. This is not a reasonable basis for the expulsion of a student who accidentally broke windows and who does not have the means to pay for their replacement." That is the only Michigan case on the question of expulsion.

Now there have been some federal cases decided which are not entirely in agreement, but they illustrate part of the problem in this area of suspension and expulsion. We had a youngster expelled from school for a limited period of time and a suit was brought in a federal district court over his reinstatement. He is the fellow who set some of the fires and he was late constantly and he just caused all kinds of troubles. You cannot run a school and allow something like that to happen. You know, we talk about rights, and rights are very important, but responsibilities are very important, too. In the operation of a school, you talk about the rights of *all* the students in the school, and the rights of the teachers in the school, the rights of the administrator in the school, the rights of the school board, and also the rights of the parents. It's everybody's rights. And when you talk about it that way, you begin to talk about responsibilities. How can we provide an educational experience that would benefit all students? And yet our culture today talks about rights, and properly so in most instances, but I think we're kind of preoccupied with rights and we don't talk enough about responsibilities.

In this case involving the young man who simply did not want to live by the rules, the federal district court reviewed his case carefully and made some findings and said some things that are quite significant. First of all, the court pointed out that when a youngster comes to school he does not leave his rights outside the door, his civil rights as a citizen of the community, as a citizen of the state of Michigan, as a citizen of the United States. He takes all those rights with him. However, his enrollment does not clothe him with immunities not enjoyed by other citizens of the community. He has no special privilege not to conform to reasonable standards of speech and conduct, nor to enjoy any special considerations with respect thereto. And certainly his student status does not give him any right to violate or impair the rights of others or engage in conduct that tends to deprive other students of an orderly atmosphere for study. That's what these cases are all about, to provide the opportunity for orderly study by all students, certainly not to insult, harrass, or abuse the administrators of the school. In this particular case, the court said that the youngster should know what he did wrong and why he was being considered for expulsion. He should be told that, and in this case he was. Then he should be given a hearing in which he may defend himself.

Now disagreement comes as to what the nature of the hearing is, whether or not it is an adversary proceeding. We might best describe an adversary proceeding this way: It is really a fight between two interests in which there is the right to cross-examine witnesses on both sides. If someone is accused of a crime, that is an adversary proceeding, if there is a trial on the merits. Parties are entitled to be represented by attorneys, they are entitled to know what the charges are, to make all the defenses, to be confronted by witnesses, to have a right to cross-examine. These are the elements of an adversary proceeding. This particular judge said this was not an adversary proceeding. The youngster was entitled to know what he had done wrong and had a right to defend himself. Because this was a federal district court, and because the decision was not appealed, the decision was not binding on other district courts and was not binding on the state courts. It is a precedent that can be followed if a judge wants to follow it.

Now in the same federal judicial district there was another case involving another youngster from another school district who had some printed material in his locker that had some obscene words in it. The school authorities became quite concerned about this and ordered his expulsion. The judge who heard that case said that the student had to be given a hearing and that he had a right to know who the witnesses were against him. The hearing also had to have the elements of an adversary proceeding. So these two courts are not in agreement. Because we do not have a decision of our highest court, the Michigan Supreme Court, we do not have a definitive standard in this area.

Now later on in some of the programs you are going to attend it is going to come to your attention that the State Board of Education is considering rules on suspension and expulsion of students and I won't go into what they are considering because I don't think it is appropriate for me to do that. In any event, in the near future, this should be settled for all school districts relative to the procedures that must be followed in order to make certain that students are treated fairly in the proceedings that determine whether or not they have in fact violated rules and regulations of the school district and whether or not they should be suspended or expelled from school.

A number of recent cases involving whether or not education is a fundamental right also have implications for suspension and expulsion, such as a case within the last two years in which the Attorney General of the State of Michigan and the Governor brought a suit on the financing of education. The important concept of whether or not education is a fundamental interest was involved in that law suit. The Supreme Court of Michigan has decided that the right to vote is a fundamental interest and the significance of such a holding is that if you do anything to put any restriction on the right, there have to be compelling reasons for doing so. There is a heavy burden to satisfy before the court will allow it to be done.

There was a law suit involving The University of Michigan and its students who wanted to vote, even though their parents lived in other states and there was a question as to whether or not they were residents here or in some other state. Our court said that the right to vote is so fundamental to citizenship that if the state puts any kind of restriction on it, there have to be very serious reasons for the restrictions.

Now in our finance case, when the Michigan Supreme Court first decided the case in our favor, they said education was a fundamental interest. But a rehearing was granted and then they dismissed our case so we do not have a precedent in Michigan today that education is a fundamental interest. So the right to attend school is a right given by the state legislature and the right to remain in school, subject to compliance with reasonable rules and regulations, is protected by other clauses of the constitution but it is not a fundamental interest.

Within the past several years, we had emerge in this state a serious problem of suspension and expulsion. Without mentioning names, which I don't think are significant anyway, we had an incident in a school which took place one day at lunchtime that affected the lives of many young people. There was a fight and youngsters were suspended and then some of them were expelled. The school district provided hearings before the expulsion and they gave the highest degree imaginable of what we call due process of law. They provided every safeguard to the students. They had a right to appear with attorneys, the right to know who the witnesses were against them. It was truly an adversary proceeding. Then when it was all over, the students were expelled. Now in the cases I have mentioned today and the court's review of the expulsions ,they would have said the school board acted within its lawful authority, and even under the division of opinions I have referred to about what kind of proceedings you have to provide before you can expel or suspend satisfied even the most demanding of courts. This district went far beyond what either judge said was required. But it expelled nevertheless, which was an extremely tough thing.

These decisions have great consequences. They affect young people's lives for a long time and perhaps forever. So the powers that have been given by the legislature, the power to adopt rules and regulations, have to be exercised in a reasonable manner and when there are infractions of them—and there comes a time when the interests of the school require that there be either suspensions or expulsions—we urge that the procedures that are used be extremely fair. I think that any school district that is contemplating procedures of this kind should expect to have them reviewed by a court and possibly hear about them on TV and so on, in our age when everything is reported immediately. Proceedings should be fair; they should be reasonable.

COLLECTION, MAINTENANCE AND DISSEMINATION OF INFORMATION FOUND IN STUDENTS' RECORDS

DANIEL A. STONE

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This paper addresses a difficult issue of law surrounding confidentiality and the collection, maintenance and dissemination of student records and civil liberties problems that occur from recordkeeping about school children. School children have widely different ages, problems and life situations. We are forced to comprehensively treat the specific problems that arise from all the various legal and educational problems surrounding school recordkeeping. I will describe central record privacy problems, emphasizing those aspects which are of particular importance for the rights of children. I will then suggest some general principles which, when appropriately applied in specific settings, may help to ameliorate some of the problems associate with the maintenance and use of records concerning school children.

School records typically serve both an historical function (as the school memories which preserve information about students) and a communication function (as they are moved within and among schools). Information in such records may influence decisions about an individual's present status or qualifications as well as predictions about his or her future behavior. Opportunities may be afforded, rewards allocated and punishments assessed in part on the basis of record information.

School records play a sufficiently important role in everyday decision making about children to pose a threat to civil liberties when those record systems are in error or misused or misinterpreted by others. When record information is inappropriate to the decision being made, or is in error, or when it is shared with persons who may misinterpret its meaning, it may perpetuate a wrongful or misleading characterization of the individual's habits, abilities or conduct. As a result, we have to address continually the policy questions of how wide and deep we wish our school memories to be and how readily information from them should be shared. Such policy questions raise issues of privacy and confidentiality, while problems of "due process" largely concern the individual's control over, and

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NOTE: The Rights and Privacy of Parents and Students legislation enacted subsequent to Dr. Stone's presentation appears in the Appendix at page rights of participation in, school recordkeeping. Due process problems concern how much of the record content, sharing and interpretation is visible to the parents and student, and how much control they may exercise over material included in a student's record.

Most record privacy problems do not arise out of accident or occasional error; they are erroneously built into the public school recordkeeping process itself. Most recordkeeping goes on in the background of organizational life; the files of a school represent a support system which is for the most part taken for granted by those who use it.

Civil liberties protections, including matters of individual privacy, commonly occupy only the margins of school concern. Whetner research is involved or school administration or counseling, civil liberties questions often may receive only occasional professional or official attention.

Any description of the child's constitutional rights of privacy, confidentiality and due process confronts three serious difficulties. First, the child generally is not regarded as a full member of the society and is not often treated as a citizen-with-rights. Second, whatever rights the child is understood to have are almost always exercised through the child's parents. Third, students' rights of privacy and confidentiality are unclear under existing law. Where information privacy is concerned, the child may dwell in a special limbo created by his inferior status as a child. An additional stigma of misbehavior, deviance or extraordinary ability, and the general lack of clarity in the laws and customs governing the use of personal information in this society can only result in confusion and misuse of information of a confidential nature.

A recent controversy in New York City illustrates these problems. Parents of children who had been abruptly transferred from one school district to another petitioned for access to school records so that they could monitor what was being said about their children by teachers and administrators. This was eventually granted by the State Education Department. However, questions were immediately raised by counselors about the confidentiality of their communications with students. As important as parental access to records is, there are occasions when the child may need to talk in confidence with someone who is not a relative.

Several national educational associations have also expressed concern regarding student records. The American Personnel and Guidance Association (APGA) issued two non-legal statements on the release of student records in June 1961. APGA said that parents have rights and responsibilities to learn and know of their children's status. Educational institutions are responsible for insuring that the content and manner of records gathered are limited to those materials that contribute to its efforts to educate the students. The December 1971 issue of the American Personnel and Guidance Association Journal is devoted entirely to the problem of confidentiality, invasion of privacy, and ethical standards related to student information. The American School Counselor Association has developed a model statement on principles of confidentiality. The National Association of Secondary School Principals in September 1971 issued a memorandum entitled *The Confidentiality of Pubic School Records*.

Considerable interest in this subject has been demonstrated in Michigan. *The Michigan School Board Journal* in a recent issue carried an article expressing its concern about the lack of policy in the area of student records.

On October 6, 1971, the Narcotics and Drug Education Advisory Council for the Michigan Department of Education submitted to the Michigan State Board of Education a report entitled *Proposed Guidelines for Drug Programs in Michigan Schools Grades K-12*. Eight pages of this document discuss confidentiality of information, the rights of parents to be informed about their children's activities, (the responsibility to report an illegal act) and the confidentiality of client information. It also discusses the problems regarding the school record and the storing of information about drug use.

The well-known and highly regarded Russell Sage Foundation in New York City has issued a report based on the recommendation of twenty authorities from the fields of law, education, social science, and public affairs which explores the ethical, legal and practical issues surrounding school recordkeeping. The Foundation Project Chairman, David Goslin, states that the basic problem is that "virtualy all school systems now maintain extensive pupil records," but very few have clearly defined policies on how to use this information.

In Michigan certain aspects of confidentiality are mandated by law such as (1) *Confidentiality of Case Records* which is part of the State of Michigan General School Laws. Refer to Administrative Rules R. 340.1007. (2) *The Maintenance of Confidentiality of Personality Test Results*. Act 305—Public Acts of 1967. (3) *School Teachers and Employees Not to Disclose Communications from Students or Other Juveniles*. Michigan Statutes Annotated. 27A.2165—Section 2165. There is a need for each school district to develop a comprehensive policy regarding student records.

This brief overview of the social, legal and ethical problems surrounding student recordkeeping is offered in hopes that the seemingly clerical recordkeeping task has importance and is crucial to the equal educational opportunity of all students. Indeed, poor recordkeeping, undefined practices and a system without safeguards may injure untold thousands of students yearly as jobs, opportunities for further education, or training or employment are lost due to the uncontrolled proliferation of information about students to those with no right of access to this information.

Because so many school districts have no formal policy governing the collection, maintenance and dissemination of school records, the following material is offered as a model to serve those legal and ethical cannons previously mentioned.

First, we may categorize the data that goes into school records as follows:

Category "A" data: Includes official administrative records that constitute the ***minimum*** personal data necessary for operation of the educational system. Specifically, we take this to mean identifying data (including names and addresses of parents or guardians), birth date, academic work completed, level of achievement, and attendance data.

Category "B" data: Includes verified information of clear importance but not absolutely necessary to the school, over time, in helping the child or in protecting others. Specifically, scores on standardized intelligence, achievement, and aptitude tests, interest inventory results, health data, family background information, systematically gathered teacher or counselor ratings and observations, anecdotal records, and verified reports of serious or recurrent behavior patterns are included in this category.

Category "C" data: Includes potentially useful information but not yet verified or clearly needed beyond the immediate present: for example, legal or clinical findings including certain personality test results, and unevaluated reports of teachers, counselors and others which may be needed in ongoing investigations and disciplinary or counseling actions.*

Such data should be reviewed at least once a year and destroyed as soon as their usefulness is ended; or transferred to Category "B." Transfer to Category "B" may be made only if two conditions are met, namely, (1) the continuing usefulness of the information is clearly demonstrated and (2) its validity has been verified, in which case parents must be notified and the nature of the information explained.

If, for any reason, temporary unevaluated data are held for more than a year, the existence of these data must be discussed with the parent and the reason for their maintenance explained fully. Parents then should have an opportunity to challenge the decision to maintain such data.

Regarding confidential, personal files of professionals in the school (school psychologist, social workers, counselors), it is recognized that professionals working in the school may maintain personal and confidential files containing notes, transcripts of interviews, clinical diagnoses, and other memory aides for their own use in counseling pupils. Any and all data that are considered to be the personal property of the professional should be guarded by the rules given above in addition to those dictated by professional ethics, subject to the terms of the employment contract between the school and the professional and any special agreements made between the professional and individual parents and/or students.

Category A: Identifying information
Attendance record
Grade level completed
Record of achievement (grades, standardized achievement test scores, class standing)

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* Russell Saga Guidelines.

Category B: Health record
IQ and aptitude test scores
Personality and interest test scores
Record of extracurricular activities
Family background data
(teacher and counselor observations—see Category C)

Category C: Teacher and counselor comments concerning academic performance, work habits, strengths and weaknesses, conduct, motivation, special problems, and the like.
Reports from outside agencies including delinquency reports, psychiatric evaluations, etc.
Reports of parent-teacher, parent-counselor conferences
Work samples

Implementation

Step I: Set up a district-wide committee to study the problem, current policy, and to formalize the procedures for collection and maintenance of student records.

Step II: Review policies with counselors, building administrators and central office personnel. If they have comments which do not violate the ethical standards proposed by this report, incorporate them.

Step III: Prepare a written procedure using examples and safeguards. Have this procedure endorsed by your building personnel and present this to the Board of Education at a public meeting. The Board should pass on the procedure and adapt the procedure as a policy for the school district.

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Guidelines for the Collection, Maintenance and Dissemination of Pupil's Records. New York: Russell Sage Foundation, 1969.

Handbook for the Collection, Maintenance and Dissemination of Student Records. Livonia, Mich.: Livonia Public Schools, 1974.

Example Letter Livonia Public Schools

RELEASE OF STUDENT RECORD INFORMATION

To the Student:

The inclusive dates of your enrollment at this school, your last grade completed and the date of your school leaving or graduation are the only kinds of information which will be released to other schools or employers without prior approval. To conserve valuable time and as a convenience to you, the records office will comply with your specific instructions when inquiries are received about your school records.

This approval form for the relase of information will become a part of your permanent school folder. Changes in instructions may be made by you at any time by sending a written notice with your signature and date to the school records office. It is to your advantage to have such instructions included in your record folder.

Schools and Scholarships

Please forward a complete transcript of my high school record to the admissions office of any school which requests this information or to any scholarship granting agency to which I have applied. I understand that this will include test scores as well as my attendance and academic record.

Yes ☐ No ☐

Employment

Please send the following information to any employer who requests it. *(Check appropriate items.)*

Check No More Than One Of The First Three Items

- ☐ Transcript of Credits—includes courses taken and grades only.
- ☐ No transcript—but information *only* about general school performance. *Rank:* upper third, middle or lower third.
- ☐ No transcript—but provide grades for specific classes about which the employer may inquire.
- ☐ Attendance information.
- ☐ I do not choose to have the above information disclosed without a specific written confirmation by myself for each written request.

Government Agencies

School officials do cooperate with the armed services, police and the courts, and upon proper identification and request will release information regarding names, addresses, birthdate and attendance records. Additional information will be provided only with the prior approval of the student and his parents.

Please send the following information to any government agency which requests it. *(Check appropriate items.)*

Check No More Than One Of The First Three Items

- ☐ Transcript of Credits—includes courses taken and grades only.
- ☐ No transcript—but information *only* about general school performance. ***Rank***: upper third, middle or lower third.
- ☐ No transcript—but provide grades for specific classes about which the employer may inquire.
- ☐ Attendance information.
- ☐ I do not choose to have the above information disclosed without a specific written confirmation by myself for each written request.

Date .... Student's Signature ....

Date .... Parent's Signature ....

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FAIR EMPLOYMENT PRACTICE ACT; PURPOSE; CIVIL RIGHT

PUBLIC ACTS 1955 — NO. 251

An act to promote and protect the welfare of the people of this state by prevention and elimination of discriminatory employment practices and policies based upon race, color, religion, national origin, or ancestry, to create a state fair employment practices commission, defining its functions, powers, and duties, and for other purposes.

The People of the State of Michigan Enact:

423.301 Fair employment practice act; purpose; civil rights M.S.A. 17.458(1) Sec. 1. The opportunity to obtain employment without descrimination because of race, color, religion, national origin, or ancestry is hereby recognized as and declared to be a civil right.

In conforming with this act it would appear that school districts should not release the following information when a student is being considered for employment.

1. Race 2. Color 3. Religion 4. National Origin or Ancestry
5. Birthplace

CONFIDENTIALITY REFERENCES — STATE OF MICHIGAN MICHIGAN STATUTES ANNOTATED

Revised Judicature Act of 1961

27A.2165 School teachers and employees not to disclose communications from students or other juveniles; consent.

SEC 2165

No teacher, guidance officer, school executive or other professional person engaged in character building in the public schools or in any other educational institution, including any clerical worker of such schools and institutions, who maintains records of students' behavior or who has such records in his custody, or who receives in confidence communications from students or other juveniles, shall be allowed in any proceedings, civil or criminal, in any court of this state, to disclose any information obtained by him from such records or such communications; nor to produce such records or transcript thereof, except that any such testimony may be given, with the consent of the person so confiding or to whom such records relate, if such person is 18 years of age or over, or, if such person is a minor, with the consent of his or her parent or legal guardian.

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STATE OF MICHIGAN GENERAL SCHOOL LAWS

R. 340.1007 Confidentiality of case records

Rule 7. School Social Work case records shall be maintained as confidential in a locked file in accordance with section 2165 of Act No. 236 of the Public Acts of 1961, being section 600.2165 of the Compiled Laws of 1948. The Superintendent of the local or intermediate school district shall designate members of the school staff who may have access to such records.

R. 340.1106. Confidentiality of test results

Rule 6. (1) Specific responses to personality tests, projective and non-projective, shall be adequately safeguarded from becoming accessible to others than those personnel qualified as prescribed in rule 5 to administer and interpret these tests. An interpretation summary of test results may be made available by such qualified personnel only to individuals directly concerned with the educational welfare of the pupil. However, specific responses and interpretation summaries may become part of published research findings and reports where the identities of the individuals tested are properly safeguarded.

(2) A transfer of individual personality test interpretation summaries to other school districts or agencies shall not be made without the permission of the parent or guardian expressed in writing and filed with the sending district.

R 340.1107. Superintendent's responsibility for compliance

Rule 7. The superintendent of schools in a district providing a school project or program in which personality tests are used is responsible for compliance with these rules.

IMPROVING SCHOOL ATTENDANCE

BEN TASICK

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One of the major problems confronting today's education is a rapid increase in student absenteeism. Playing hooky from school has become a national sport for an increasing number of students and the rate of absenteeism rises annually. In attempting to deal with this problem many school districts are for the first time instituting attendance policies and are enforcing them irrevocably. Unfortunately, most of these policies are punitive and negative in nature and are having a negligible effect in resolving the problem while antagonizing and alienating the students.

In researching an attendance policy for Ypsilanti High School I found that many districts function on the assumption that there is something wrong with the student if the student doesn't attend regularly and then base the total policy on that assumption. We have many districts which are failing students after an X amount of unexcused absences without ever considering the students academic standing at the time of the violation of the policy. This I find not only an unconscionable practice but a direct repudiation of how one learns and achieves academically. Out of pure frustration and refusal to analytically look at the problem of absenteeism, many districts have imposed simplistic and highly questionable attendance policies. Ypsilanti is no exception to this practice. A highly punitive attendance policy was adopted by the Board of Education and when students demonstrated en masse the Board was forced to retrench.

Poor attendance is a complex problem and the total school environment is responsible for its solutions. Classroom instruction, involved guidance and counseling and fair and equitable enforcement of school rules all play a large part in good school attendance. Teachers must begin to re-examine their daily classroom practices and question how they contribute to poor attendance. The counselors must work with attendance problem students since the counselors have access to resources and have had extensive training in the maturation of the adolescents. Far too often many counselors perceive attendance problems to be an administrative problem and refuse to accept any responsibility in dealing with it. Finally, administrators have the ultimate responsibility in creating an atmosphere conducive to the establishment of policies that will encourage good attendance as opposed to providing a long list of penalties.

As a practicing administrator I am not only cognizant of the factors contributing to poor attendance but I also have the incumbent responsibility of articulating these factors to the total educational community which includes the parents who in the final analysis should play a large role in policy development. I strongly urge that attendance expectations be defined by every school district. Attendance is a legal and moral responsibility of all educators and they should discharge it not as a death penalty like many districts do but instead should begin to establish new positive and constructive approaches to improving school attendance.

One example of a district's attempt to cope with attendance problems is reflected in the following policy. After its implementation it was evident that modifications would be necessary. Recommendations for improving upon this policy follow the policy as it was originally written. The experience of this district may be representative of problems encountered by other districts as they formulate policies and practice in the area of attendance.

STUDENT ATTENDANCE POLICY AND PROCEDURES

Ypsilanti High School
1973–74

(Revised November 19, 1973)

Philosophy

It should be obvious that good attendance is necessary for good achievement and progress in school. Since many classes are performance oriented, attendance is a must. Intellectual and social growth depends on social interaction which is an integral part of classroom instruction. Preparation for future responsibility depends on development of responsibilities and punctuality at an early age.

The 10% absence allowance described below is to be considered "sick leave" and should be used for illness and emergecy kinds of situations.

Policy

Students must attend 90% of each semester course in order to receive credit for that course. Vacations are not included in the 10% absence allowance if over three (3) school days and not more than ten (10) school days, with parental consent. It is recommended that parents contact the atendance officer to excuse the absence and students should pre-arrange for make-up work with teachers. If pre-arrangements have not been made, parents must contact the attendance officer by phone or a written notice within two (2) weeks of student's return to school from a vacation for the absence to be excused.

Procedure

1. 10% applies to all absences. Those absences due to illness will count as one absence (i.e., 1 days = 1 absence; 2 consecutive days = 1 absence; 3 consecutive days = 1 absence, etc.). Parents must contact the school in case of illnesses which exceed one day. Absences due to a death in the family are excusable. Parents must contact the school on those absences so that teachers may be notified. Make-up work must be cleared within two (2) weeks or they will count as unexcused absences.

   Some types of classroom work and experiences cannot be made up, yet if it is possible to make up missed school work, the student will be allowed two (2) weeks to complete it. Those students attending performance oriented classes will not be penalized for work that cannot be made up if the absence is excused.

Absences are not be carried over from one semester to the next. School sponsored activities such as field trips, sporting events, student council meetings, vacations, death in the family, etc., do not fall within the 10% attendance policy.

2. Teachers must contact the parents and counselors after three (3) absences by phone or by a Student Referral Form. The same procedure is to follow after six (6) absences. If the student exceeds the 10% absence allowance (9 days) a conference must be arranged between student, parent, teacher and counselor. They will decide on the best course of action, such as failure, a probation* period, P.E.P., Adult Education, etc. In cases involving lack of parental concern, the parent may be omitted from the conference.
3. Attendance must be taken every hour and recorded carefully for records. The teacher Record Book is the legal record of attendance.
4. For perfect attendance the teacher has the option to excuse students from final examinations.
5. Exceptional cases will be reviewed by the Attendance Officer or an Administrator. An Administrative waiver may be granted in cases where the best interest of the student and school will be served.

Tardiness Policy

1. Each four (4) tardies in a three-week period will mean the student must come in after school for an equivalent amount of time to make up their tardies.
2. If a student continues to have a problem with tardiness, a conference will be made with the student and teacher to discuss the problem. If after the teacher-student conference the student continues to misuse the tardiness policy then the teacher shall have the right to convert all tardies to absences (4 tardies = 1 absence).
3. If the student leaves the classroom without permission it is to be counted as an absence for that day. Hall passes shall be issued in all classes except the Great Room when a student leaves the classroom during a class period.
4. It is recommended that if a student is more than twenty minutes late to class, a pass is required to enter the classroom. If the student cannot present this pass, it will be considered as an absence for that day.

Conclusion

The students must understand that this new policy, if adopted, must not be abused. The specified number of allowable absences is to be used for legitimate purposes only including illness, doctors appointments, dentist appointments, etc. The student who arbitrarily cuts classes and then finds himself faced with absences exceeding the prescribed limit has abused the policy and will have to contend with the decision of the review conference. We must all cooperate by attending classes regularly or we have failed in our cause.

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* Probation action—allowing five (5) days for excused absences *only*. The number of additional absence days described above is to be determined at the conference. If you go over or misuse five (5) days then you do not receive credit for that course.

ATTENDANCE POLICY RECOMMENDATIONS FOR SECOND SEMESTER 1973–74 SCHOOL YEAR

(Submitted January 14, 1974)

Due to the fact that the present and past attendance policy for the school year 1973–74 is one of many loopholes and is far too specific for implementation; changes are being recommended for the second semester of the current school year. The present policy is very difficult to interpret and administer with any degree of consistency and fairness to our student body. The idea of excuses for certain types of illnesses, vacations, etc., are too detailed and allows only a limited number of students to receive benefits or excuses for legitimate absences. Therefore, I am recommending changes that hopefully are general enough for all students to benefit from and receive credit for excused absences and to be penalized upon violation of the attendance policy.

The recommendations are:

I. 90% compulsory attendance.

A. The idea of 90% compulsory attendance should be changed. This does not imply that good attendance is not to be encouraged, but that a students passing or failure should not depend upon his attendance but more on his academic achievement. If teachers have outlined course objectives for students and they are accomplished this should take priority.

B. If a student is absent from school for reasons of illness, vacation, school functions, or unavoidable situations, he must be excused for his absence. When a student returns to school he must bring a written excuse explaining reasons for absence. This note should include dates of absences, reasons for absence, and the signature of a parent or guardian.

The note is to be presented to the attendance officer who will issue a readmit slip. If a student is registered under adult status, he or she may sign the written note confirming absence. If a student does not have a note upon returning after absence, a temporary unexcused note will be issued. Failure to bring a written excuse within two days results in an unexcused absence and mark of "E" for all work missed during the period of absence. Teachers should allow make up work for all excused absences if make up is possible. In cases of movies or skills oriented classes, efforts should be made to substitute for the exercise that the student missed. The time limit for make up is left to the subject teacher.

II. Tardiness

A. The idea of marking a student absent for being over 20 minutes late should be changed. If a student knows that he is going to be marked absent for being more than 20 minutes late, he might choose to roam the halls or do things that are not a part of his daily class schedule. Many students have legitimate reasons for being late to class. In such cases a pass should be issued by the teacher or staff member who has detained the student. Any student who arrives tardy without an official pass should be dealt with by the individual class room teacher who may set up rules and regulations in regard to class tardies. Students are allowed ample time for class exchange and travel, therefore, tardiness is not expected.

III. Student arrival and early leave.

A. Any student arriving to school after 8:30 A.M. should sign in at the attendance office. Excused or unexcused admits will be issued. The check in is important because the official report counts may have been turned in before the student arrives to school.

B. Any student leaving school before the end of the regular school day should check out with the nurse or at the attendance office. Any student who leaves the building without properly checking out will receive "E" for those classes missed. Students must obtain readmit slips from the attendance office upon return to school.

IV. Student referral policy.

A. The classroom teacher should fill out referral forms on unexcused absences only. The first referral form should be sent when the classroom teacher feels that a class skip pattern has developed. At that time the teacher should notify the attendance office and parent study conferenses are to be held. The referral form should be filled out properly and should list all data that is of value in the individual case such as student name, grade etc. If skipping problem cannot be resolved at the attendance office, the case will be turned over to the assistant principal for disciplinary action. Second hour is the official counting period for daily attendance. Each teacher who has a second hour class should report by 2:30 P.M. each day those students who were not in attendance. If a student arrives after second hour the respective teacher will be notified by the office of any attendance change to be recorded. The student attendance probation procedure remains the same. After the ninth unexcused absence the student should be issued the attendance probation slip and a possible parent conference.

THE RIGHTS OF SECONDARY SCHOOL STUDENTS REGARDING OFFICIAL PUBLICATIONS

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I. INTRODUCTION

> Congress shall make no law . . . abridging the freedom of speech, or of the press . . .
>
> (U.S. Constitution, First Amendment)

> Every person may freely speak, write, express and publish his views on all subjects, being responsible for the abuse of such right; and no law shall be enacted to restrain or abridge the liberty of speech or of the press.
>
> (Michigan Constitution, Article 1, section 5)

Students are citizens within the meaning of these constitutional provisions[1] and thus their publications—be they petitions, pamphlets or newspapers—are protected. Though the rights of students are not in every instance coextensive with their rights off school premises[2] or the rights of adults,[3] they remain substantial, as the Supreme Court has noted:

> The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools. The classroom is peculiarly the "marketplace of ideas." The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth out of a multitude of tongues, |rather| than through any kind of authoritatve selection.[4]
>
> In our system, students may not be regarded as close-circuit recipients of only that which the state chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved.[5]

Is freedom of the press an absolute right or may it be subject to some regulation?

Freedom of the press is not absolute,[6] but any substantial limitation on its exercise bears a presumption of unconstitutionality.[7] This does not mean that certain categories of expression are not unprotected nor that reasonable regulations may not be imposed on even protected classes of expression. It does mean that in developing publications policies, the discretion of school officials is unusually restricted.

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[1] *Tinker v. Des Moines School District*, 393 U.S. 503 (1969).

[2] *Id.* at 506 refers to "First Amendment rights applied in light of the special circumstances of the school environment." See also *e.g. Eisner v. Stamford*, 440 **F**.2d 803 at 808 (2d Cir. 1971) and *Shanley v. Northwest Independent School District*, 462 **F**.2d 960 at 968 (5th Cir. 1972) quoted infra at n. 67.

[3] The concurring view of Justice Stewart in *Tinker* at 515 that the rights of children are not coextensive with those of adults has been reiterated in a majority of the high school publication cases, including *Baughman v. Freienmouth*, 478 **F**.2d 1345 at 1348 (4th Cir. 1973); *Quarterman* v. Byrd. 435 **F**.2d 54 at 57 (4th Cir. 1971); *Vail v. Board of Education of Portsmouth*, 354 **F**. Supp. 592 at 598 (D. New Hampshire, 1973); *Koppell v. Levine*, 347 **F**. Supp. 456 at 458–459 (E.D.N.Y. 1972); *Schwartz v. Schuker*, 298 **F**. Supp. 238 at 242 (S.D.N.Y. 1969). Though a number of cases expressly differentiate between college and high school students *(e.g. Schwartz)*, and others tend impliedly to minimize the distinction by citing without qualification higher education precedent (*e.g. Tinker*), only *Eisner* (at 808 n. 5) discusses in any detail the basis for the college-high school distinction. Compare *Eisner* and *Schwartz* with *Sullivan v. Houston Independent School District*, 307 **F**. Supp. 1328 at 1343 (S.D. Tex. 1969), |hereafter Sullivan a| and 333 **F**. Supp. 1149 at 1157–59 (supplemental injunction vacated subsequently) |hereafter Sullivan b|, the only cases in the unofficial publications content which suggest the rights of younger students (whatever the appropriate scope) require more vigilant protection than do the rights of college students or adults.

[4] *Keyishian v. Board of Regents*, 385 U.S. 589 at 603 (1967) cited approvingly with reference to high schools in *Tinker* at 512.

[5] *Tinker* at 511.

[6] *Near v. Minnesota*, 283 U.S. 697 (1931).

[7] See, *e.g. United States v. Washington Post Co.*, 403 U.S. 713 (1971) (pentagon papers case) and *Tinker*.

> Since . . . the line between speech unconditionally guaranteed and speech which may legitimately be regulated . . . is finely drawn, . . . [t]he separation of legitimate from illegitimate speech calls for . . . sensitive tools.[8]

Consequently, a survey of case law may be instructive for school authorities and their legal counsel as to what limitations on content and what regulations governing distribution of unofficial student publications are permissible and which are unconstitutional. The preponderance of cases are federal, with emphasis placed on federal Supreme Court and appellate decisions. Michigan constitutional, statutory and case law is also incorporated, frequently in footnotes, to illustrate the junctures and relationships between federal and state law in this legal context.

II. RULES GOVERNING DISTRIBUTION

This portion of the review is devoted to the constitutionality of a number of common school provisions governing the distribution of non-school sponsored publications, including provisions involving prior submission, identification of authors, sale, and time, place, and manner.

A. *Prior Submission*

Can students who write and/or publish materials and want to distribute them on or near school premises be required to submit them in advance to a school administrator for approval?

No definitive answer exists as the Supreme Court has not considered the question in the school context,[9] the Circuits which have examined the issue are in conflict,[10] and a number of Circuits, including the Sixth, which encompasses Michigan, have not rendered an opinion on the issue.[11]

Generally, the case law is unequivocal that publications cannot be subject to review prior to distribution,[12] especially when an expeditious review procedure is lacking.[13] In essence:

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[8] *Blount v. Rizzi*, 400 U.S. 410 at 417 (1970), citing earlier authority, (administrative censorship scheme developed pursuant to Title 39 USC, authorizing post office to reject certain materials deemed obscene, held unconstitutional).

[9] The Supreme Court has to date not reviewed the conflicting interpretations and this issue is not the focus of a high school student publications case for which certiorari has been recently granted (*Jacobs v.School Commissioners of the City of Indianapolis*, 42 U.S. L. W. 3666).

[10] The 1st and 7th Circuits have rejected prior submission requirements as *per se* unconstitutional while the 2nd., 4th and 5th have approved such requirements in principle, see n. 16 and 17 infra.

[11] The balance of the 11 Federal Circuits have not directly resolved the issue as of this date. The Sixth Circuit, however, has granted review of a suburban Columbus, Ohio publications case which may reach this issue.

> Every free man has an undoubted right to lay what sentiments he pleases before the public; to forbid this is to destroy the freedom of the press; but if he publishes what is improper, mischievous, or illegal, he must take the consequences . . .[14]

The constitutional aversion to requiring any prior review of content is based substantially on the danger that an administrative agent may have the practical power to prohibit the publication or distribution of materials on an ad hoc basis without regard to constitutional protections and without public awareness of what is being censored. Additionally, the mere existence of such a review procedure, even if objectively administered, may have a chilling effect on expression.[15]

The undoubted right of adults in society-at-large is less certain in the school setting. While two Circuits, the 1st and 7th, have held any advance approval policy for high school publications unconstitutional *per se*,[16] three Circuits, the 2nd, 4th, and 5th, have held prior submission constitutional *in principle*.[17] Notably, however, a majority of the specific policies before the courts in the 2nd, 4th, and 5th Circuits were found to be unconstitutional, either facially or in application.[18] Strict prerequisites, both substantive and procedural, are imposed on any policy requiring appproval prior to distribution.[19]

It need also be recognized that while a prior submission policy may be interpreted as being consonant with federal constitutional principles in a Circuit or in the nation, such a policy may violate state constitutional provisions. Thus, though state constitutional interpretations tend to track their federal counterpart, the more express and detailed state press provision, such as exists in Michigan, may prohibit prior submission in the school context, though the federal constitution may or may not do so.[20]

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[12] *Near* and *New York Times Co. v. United States*, 403 U.S. 713 (1973).

[13] *Freedman v. Maryland*, 308 U.S. 51 (1965).

[14] *Near* at 713–14 quoting Blackstone.

[15] These dangers are reiterated in a number of Supreme Court cases including *A Quantity of Books v. Kansas*, 378 U.S. 205 (1964) and *Grayned v. City of Rockford* 488 U.S. 104 (1972) both of which were subsequently cited in a high school publication case, *Baughman* at 1350.

[16] First Circuit (*Riseman v. School Committee of The City of Quincy*, 439 F.2d 148, 1971) and Seventh Circuit (*Fujishima v. Board of Education*, 460 F.2d 1355, 1972).

[17] The Second Circuit (*Eisner v. Stanford Board of Education*, 440 F.2d 803, 1971), the Fourth Circuit (*Quarterman v. Byrd*, 435 F.2d 54, 1971 and *Baughman v. Freienmuth*, 478 F.2d 1345, 1973) and the Fifth Circuit (*Shanley v. Northeast Independent School District*, 462 F.2d 960, 1972 and *Sullivan v. Houston Independent School District*, 475 F.2d 1071, 1973) [Sullivan, hereafter refers to this appellate decision unless otherwise noted].

[18] *Eisner* (absence of procedural mechanism for submission), *Quarterman* (absence of criteria to determine permissibility and lack of procedural safeguards), *Baughman* (lack of procedural safeguards of specified and short time for principals determination), and *Shanley* (overbroad and vague and fails to provide guides for screening of materials).

[19] Procedural safeguards are enumerated in II B, supra.

B. *Procedural Requisites If Prior Submission Required*

Even assuming prior submission is not unconstitutional per se, what procedural and substantive provisions designed to protect freedom of the press must be incorporated into such a policy in order to satisfy the constitution?

In order to overcome the presumption of unconstitutionality that attaches to any policy subjecting materials to prior submission, it must, according to one or more case, provide:

1. *A definition of distribution and an explanation of its applicability to various kinds of material.*

Of the five appellate decisions authorizing prior restraint, three discuss the need for the policy to define "distribution."[21] These cases conclude that a prohibition against distributing written material is unconstitutionally vague since it would be unreasonable for the policy to reach the exchange of a single copy of a magazine of general circulation. The Courts note that "distribution" for purposes of such a policy must refer to "a substantial distribution" of written materials, so that ". . . in a significant number of instances there would be a likelihood that the distribution would disrupt school operations."

Additionally, one of the cases introduces a flexible definition of "distribution" dependent on the type of material involved.[22] Thus a single copy of pornographic material may constitute "distribution" while a significant number of copies of materials which may disrupt schools, advocate illegal actions or insult any group or individual are necessary to be deemed "distribution." This distinction is apparently based on the presumption that while an individual may be "harmed" by exposure to pornographic materials, the dangers of potential disruption are more probable when a group of students are exposed to the questionable publication.

2. *A procedure for submitting materials.*

Two of the cases expressly, and others implicitly, identify the need for prior submission policies to set forth "the means by which students are to submit proposed materials"[23] since otherwise, distribution is "unreasonably proscribed" because of students' ignorance of the procedure.[24]

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[20] In a leading case, *City of Dearborn v. Ansell* 290 Mich 348, 287 N.W. 551 (1939), the Supreme Court invalidated a city ordinance which forbid the distribution of circulars without a license and conditioned the issuance of a license on establishing, to the city clerk's satisfaction, that the circular did not contain any obscene, immoral, scandalous, libelous or untruthful material.

[21] *Eisner* at 811, *Baughman* at 1349, and *Shanley* at 977.

[22] *Baughman* at 1349.

[23] *Shanley* at 978.

[24] *Eisner* at 811.

3. *The indentity of the person to receive the materials.*

In conjunction with describing the procedure for submission, the exact identity of the individual (or position) to whom the materials should be submitted is necessary.[25]

4. *A specified and limited period for school authorities to make a determination as to the distributability of the submitted materials.*

Courts have variously called for review and a decision within "a definite brief period,"[26] "a specified and reasonably short period of time,"[27] "a brief and reasonable period,"[28] and "almost immediately."[29] Clearly, administrative delay of a full academic year in deciding whether a publication can be distributed is completely unacceptable.[30] One working day to review the publication before distribution was specified in one of the few, if not the only policy before the courts that included a definite review period. The court, however, suggested that even one working day might be too long given the importance of timeliness to newspapers and depending on frequency of publication.[31] Another court, though, has concluded it outside its province to suggest a limit, instead admonishing that: "Whatever period is allowed, the regulation may not lawfully be used to choke off spontaneous expression in reaction to events of great public importance and impact.[32]

5. *A provision for the contingency that the party responsible for determining distributability fails to act.*

One case even requires that provision be made for the failure of school authorities to act within the proscribed period, suggesting at least impliedly that students be authorized to proceed with distribution under such a circumstance.[33]

6. *A reasonable, adequate and prompt appeal mechanism and methodology.*

When the state attempts to enforce a prior submission policy of any kind, strict procedural formalities must be observed.[34] In addition to those formalities enumerated above, "an expeditious review procedure of the decision of school authorities" is required in nearly all the decided cases,[35] with one expressly stating that the policy must state the time during which the appeal must be decided.[36] While authoritative Supreme Court precedent in nonschool cases requires a judicial determination before final restraint may be imposed,[37] the lower federal courts do not so hold in the school setting. Rather, the leading case concludes that ". . . it would be highly disruptive to the educational process if a secondary school principal were required to take a school newspaper editor to court . . . to restrain its cause."[38] The court, however, did opine that ". . . if students choose to litigate, school authorities must demonstrate a reasonable basis for interference with student speech"[39] and thereby satisfy the principle that the state must assume the burden of proving the material is unprotected by the First Amendment. None of the subsequently decided school cases require the appellate review to be conducted by other than school authorities.

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[25] *Id.*
[26] *Id.* at 810.
[27] *Baughman* at 1348.
[28] *Shanley* at 978.
[29] *Koppell* at 460.
[30] *Id.*
[31] *Sullivan* b at 1160 n. 13.
[32] *Baughman* at 1348–49.
[33] *Id* at 1348.
[34] *Freedman.*
[35] *Eisner* at 810, *Baughman* at 1348, *Quarterman* at 59, *Shanley* at 978.

7. *Precise criteria—narrow, objective, reasonable and understandable to high school students—spelling out what may and may not be written.*

Besides the absence of procedural safeguards, an almost equally prevalent and fatal flaw in prior submission policies is the failure to provide school authorities with adequate criteria to apply in screening the content of publications. Two early appellate cases suggested that school policies which either incorporated Supreme Court language[40]—such as "substantial and material disruption"—into publications prohibtions or else could be construed to have done so in application,[41] would not be unconstitutionally overbroad or vague.

Noting that ". . . a regulation imposing prior restraint must be much more precise than a regulation imposing post-publication sanctions," two courts have explicitly rejected the "Supreme Court language test,"[42] and the trend generally is to require considerably more preciseness where prior approval is contemplated.[43] Current decisions are more likely to require the specification of "clear and demonstrable criteria"[44] or "narrow, objective, and reasonable standards"[45] to be utilized by school authorities in evaluating materials submitted for prior approval. An additional requisite expressly imposed in at least one instance, and conceptually in most others, is that the criteria be "understandable to high school students and administrators untutored in the law."[46] Thus the use of terms of art such as "obscene" or "libel" have been held impermissible[47] given either their near impossibility of comprehensible definition as in the case of "obscenity"[48] or the existence of numerous unannounced exceptions such as the qualified privileges that abound in the area of defamation.[49]

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[36] *Shanley* at 977.

[37] See *e.g. Freedman* and *Blount* (administrative appeal to post office general counsel held inadequate).

[38] *Eisner*.

[39] *Id* at 810.

[40] *Quarterman* at 59.

[41] *Eisner* at 808.

[42] *Baughman* at 1350 and *Jacobs v. School Commissioners of Indianapolis*, 490 F.2d 601 (7th Cir. 1973), slip op. at 4 [thereafter all cites to slip op.] Note that *Baughman* was decided in the same Circuit as the earlier *Quarterman* case with one member of the three judge panel sitting in both cases.

[43] Several decisions have implied as Judge Craven stated in *Baughman* at 1350: "In short, we think letting students write first and be judged is far less inhibiting than vice versa. For that reason vagueness that is intolerable in a prior restraint context may be permissible as post publication sanction."

[44] *Shanley* at 977.

[45] *Baughman* at 1350.

The trend toward requiring that clear, objective and understandable criteria be set out in school publications policies is founded on two historic concerns reiterated in recent cases. These concerns, both of which threaten to chill potentially protected expression, are: one, that those charged with enforcing the regulation have impermissible power to judge the material on an "*ad hoc* and subjective basis;"[50] or two, that students do not have notice of what may or may not be written for distribution on school premises.[51]

8. *A provision directing that students should not be restrained or punished for attempting to undisruptively exercise their rights merely because students with differing views might or do cause disruptive reaction.*

Decisions in three Circuits have either required or suggested such a provision in student publications cases.[52] Those cases and others are discussed at page 79 infra.

In conclusion, then, the satisfaction of the enumerated conditions for constitutionality is extremely difficult as reflected by the number of such policies held unconstitutional, either facially or in application. Perhaps the most demanding element is that requiring precise and understandable definitions[53] of categories of unprotected content[54] and the subsequent administrative task of determining what content falls within these various categories. Such determinations not infrequently prove difficult for judges, let alone the average school administrator[55] (for example, see discussion of obscene and pornographic content infra at page 70). At a minimum, the involvement of the school attorney may be necessitated, as provided for in one policy.[56]

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[46] *Id.* at 1350-51.

[47] *Id.* at 1351.

[48] See, p. 70 infra for a discussion of prohibitions on obscene and pornographic materials.

[49] See, p. 67 infra for a discussion of defamation in unofficial school publications.

[50] See *e.g.*, ***Baughman*** at 1349-1350 and ***Shanley*** at 977 where the judge declared: "[O]ur constitutional system does not permit any school board or administrator, however well-intentioned, to be the unaccountable imperator of the lives of our children."

[51] ***Baughman*** at 1349-51, ***Shanley*** at 976-77, and ***Eisner*** at 808 where the court commented on the danger of a vague policy ,"[s]tudents would be left to guess at their peril the thrust of the policy in a specific case and the resultant chill on first amendment rights might be intolerable."

[52] ***Eisner*** at 809 (2nd Cir); ***Shanley*** at 974 (5th Cir).

[53] See discussion at p. 57 supra.

[54] Categories of unprotected content are discussed in Part III infra.

[55] The allegations of school officials as to what is obscene and pornographic discussed infra reflects their lack of awareness of various legal standards, though the confusion

By restricting school involvement to post-publication sanctions in those cases where the right is abused, the school can minimize or avoid a number of problems. For instance, the school can decrease the need for preciseness in delineating what is prohibited content,[57] minimize the need for time-consuming administrative involvement by deferring to public officials responsible for the enforcement of various laws or private citizens individually wronged, and protect itself from potential fiscal liability either as the result of having "approved" a newspaper subsequently found to be libelous or obscene, for instance,[58] or as the result of unlawfully enfringing on a student's right by disallowing its circulation.[59]

Furthermore, putting the burden on the school, city or county prosecutor, or adults, to justify their contentions in a court of law is more nearly consonant with Supreme Court precedent and more reasonable, given the special circumstances of students and schools. For instance, resources are more readily available to adults and particularly public enforcement agencies than to students and, more importantly, adults do not face the same onerous social and psychological dilemma of challenging a system in which they must remain and on which they are dependent for an education.

Legal considerations aside, school administrators might examine the organizational utility of unofficial student publications. Given the complexity of the educational process and the enormity of the task, it is not unusual to find elaborate organizational structures for the administration and delivery of services. These structures are readily depicted on detailed organizational charts which chateracteristically reflect a hierarchical concentration of decision-making authority not uncommon in complex organizations.

As often the case in organizations that attribute significance to the pronouncements of individuals based on their relative position in the hierarchy, communications patterns in schools tend, for all practical purposes, to be single directional, with only token mechanisms, such as

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is not altogether unexplainable given judicial abstruseness. A survey of in-service administrators and pre-service teachers conducted by this writer, confirms the lack of awareness. The problem may be the result of lack of awareness due to factors such as the absence of any systematic coverage of student rights and responsibilities at teacher and administrator-training institutions, the natural tendency to maintain personal ignorance where knowledge would necessitate change and inconvenience. Finally, the open thwarting of established precedent cannot be discounted as an explanation for the divergence between law and practice.

[56] *Sullivan* b at 1160 (Policy developed pursuant to earlier permanent injunction provided administration with authority to prohibit, with concurrence of school attorney, material deemed libelous or obscene).

[57] See n. 43 supra.

[58] See generally, "Tort Liablity of A University for Libelous Material in Student Publications," 71 *Mich. L. R.* 1061 (1973).

[59] See, e.g., *Pyle v. Blews*, No. 70-1829, S. D. Fla 1971, (federal judge awarded student $100.00 in compensatory damages and $182.00 in court costs).

grievance procedures, to facilitate upward communication. The existence of a two-way-communication network is essential to the very health and maintenance of a complex organization. Individuals such as students rely on communication to bridge human experiences and foster understanding; to release feelings of anxiety, aggression and hostility; to convey ideas; to demonstrate creativity; and to influence others. Schools, as other organizations, are dependent on communication or feedback as to current educational needs, adequacy of services, and problems and expectations of client and employee groups.

In this context, it has been suggested that unofficial publications be viewed as "peaceful channels of student protest," and "valuable educational tools" which provide administrators with "insight into student thinking and student problems."[60] School officials should at least carefully weigh the foregoing legal and organizational considerations before adopting a prior submission policy.

C. *Identification of Author*

Must the names of authors, publishers, or distributors appear on the face of the publication?

Although it is not uncommon to find a school policy requiring the identification of all contributors to, or distributors of, student publications on the face of the document, relatively few cases have squarely considered the issue. In fact, the only appellate decision has held such a requirement to be impermissible, at least as an unqualified policy,[61] citing a Supreme Court opinion invalidating a municipal ordinance which prohibited the distribution of hand bills without similar identification. In that decision the Supreme Court observed:

> Anonymous pamphlets, leaflets, brochures, and even books (including many revolutionary war documents and those urging the adoption of our constitution) have played an important role in the progress of mankind. Persecuted groups and sects from time to time throughout history have been able to criticize oppressive practices and laws either anonymously or not at all.

The Court majority, however, did not pass on the validity of a carefully limited odinance designed to identify those responsible for fraud, false advertising and libel[63] and the one dissenting Justice noted a number of contexts in which identification requirements had been upheld, such as state and federal legislation prohibiting anonymous campaign literature and requiring the registration of lobbyists.[64] Consequently, it may be possible, where a significant state interest based on actual experience can be demonstrated, to prohibit the circulation of anonymous materials, provided the regulation is narrowly drawn so as to suppress only the materials noxious to the state interest involved.

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[60] *Eisner v. Stanford Board of Education,* 314 F. Supp. 832 (D. Conn. 1970), modified in part 440 F. 2d 803; see also *Sullivan* a at 1342.

[61] *Jacobs* at 7.

[62] *Talley v. California,* 362 U.S. 60 at 64 (1960).

[63] *Id.*

[64] *Id.*

Students may be able to persuasively argue that their need for anonymity *is particularly acute in the school setting, given their subservient position* which renders them vulnerable to the variety of academic and behavioral sanctions available to school officials. Experience as mirrored in case law does little to substantiate the need for even a narrowly drawn identification regulation to hold accountable those responsible for fraud, libel or even pornography.

Furthermore, there may be less onerous alternatives available to the state or school authorities to satisfy their accountability interests than even a narrowly circumscribed identification requirement. Practically, it can be argued that administrators utilizing what they now deem their conventional techniques can discover at least the parties responsible for any significant distribution of materials on or near school premises. Besides limiting the contextual coverage of any such policy, limiting the number of persons aware of the publisher's identity may also provide a less onerous alternative to identification on the face of the document. Thus, a mechanism could be established whereby an independent third party which knowledge of the identity of contributing persons would provide the names to school officials only under carefully prescribed conditions, such as a determination by appropriate officials to prosecute or private individuals to institute a civil action. Even the provision that the publisher or distributor personally provide the school principal a copy of otherwise anonymous document, thereby insulating the publisher from retaliatory actions from all but one school person, might be preferable to current practice.[65] The last mechanism, however, suffers a serious flaw because of the frequency with which the principal or his building policies are the target of criticism.[66]

D. *Time, Place and Manner*

Must students comply with regulations governing the time, place, and manner of distribution?

The longstanding legal distinction between proscribing versus merely regulating the distribution of publications is the basis for the authority of school officials to establish reasonable rules governing time, place, and manner. The authority which is almost always conceded by student plaintiffs is universally reiterated in the student publications cases.

Challenges focus on what is a reasonable regulation of substantial First Amendment interests, given the special circumstances of the school.[67]

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[65] ***Riseman***, n. 3 at 149.

[66] See discussion of personal and institutional criticism infra at 67.

[67] Those circumstances have been described particularly succinctly in *Shanley* at 968-69:

[The] Court has endeavored to give careful recognition to the differences between

Courts, in assessing reasonableness, may intervene to invalidate overly broad or restrictive regulations, since "free speech is not a right that is given only to be so circumscribed that it exists in principle but not in fact."[68]

1. *Regulation of Place of Distribution*

Though few cases have directly considered the reasonableness of specific regulations governing *place* of distribution, the facts underlying federal decisions have involved publications distributed off school premises, though adjacent to them;[69] on school grounds,[70] and within school buildings.[71] Generally, the Supreme Court has declared that students do not "shed their constitutional rights . . . at the schoolhouse gate,"[72] and most subsequently developed policies have acknowledged this by allowing the distribution of at least approved materials on school premises.[73]

The Supreme Court, however, has made it equally apparent that neither do students forfeit their constitutional rights at the schoolhouse door. Specifically, the Court has noted that school officials may not confine the exercise of First Amendment rights to a telephone booth[74] or other area provided as a "safe haven for crackpots,"[75] or even to a classroom if at the exclusion of the cafeteria, playing field and any other portion of the campus.[76] The right to distribute student publications within buildings has been expressly affirmed in at least two appellate decisions[77] and no case has held to the contrary as a matter of law, though school policies generally fail to expressly reflect this.[78]

> what are reasonable restraints in the classroom and what are reasonable restraints on the street corner? [H]igh school students and teachers cannot easily disassociate themselves from expressions directed toward them on school property and during school hours. [D]isciplinary problems in such a populated and concentrated setting seriously sap the educational process . . . [H]igh school teachers and administrators have the vital responsibility of compressing a variety of subjects and activities into a relatively confined period of time and space. . . .

[68] ***Tinker*** at 513.

[69] ***Shanley*** (on the sidewalk of a street separated from the school by a parking lot); ***Sullivan*** (near the entrance to the campus) and ***Fujishima*** (across the street from the school during a fire drill).

[70] ***Riseman,*** (on grounds outside building); ***Eisner*** (3 issues beyond school limits and 4th on school grounds); ***Baughman*** (on school grounds); ***Vail*** (outside front door); and ***Schwartz*** (on school premises and earlier off them).

[71] ***Riseman*** (in school distribution authorized); ***Quarterman*** (in school), ***Scoville v. Board of Education of Joliet,*** 425 F.2d 10 (7 Cir. 1970) Scoville cert. denied 400 U.S. 826 (sale of publication in school including classrooms).

[72] ***Tinker*** at 506.

[73] See, *e.g.*, ***Baughman, Quarterman, Shanley, Sullivan, Fujishima.***

[74] ***Tinker*** at 513.

[75] ***Id.***

[76] ***Id.*** at 512.

[77] ***Riseman and Sullivan.***

[78] School policies before the courts have frequently allowed circulation on school premises but have failed to delineate precisely where on the premises would be per-

Of course, this does not mean that school authorities may not regulate the location within the building where the distribution is permissible, provided it is reasonable. School authorities generally may prohibit distribution wherever it would substantially interfere with the normal operation of the school.[79] Though the reasonableness may turn on facts peculiar to an individual school, some courts have suggested it would not be unreasonable to prohibit distribution in classrooms, the library, or the halls.[80] Other courts, however, suggest that even these locations may be appropriate, at least at certain times.[81]

Finally, it is agreed that whatever the scope of school authority over student publications, the power to regulate distribution off school premises cannot exceed its authority to forbid or punish on-campus activity.[82] The suggestion is that the school's authority is considerably less regarding even unapproved publications distributed off school grounds,[83] though courts are not disposed to rule that there never can be regulation of student conduct off school grounds,[84] such as where the conduct results in disruption at school. In each case decided to date involving off-campus distribution, the student distributor has either not been punished[85] or else has been disciplined in the court's view for the breach of some other reasonable school rule, with one exception.[86]

2. *Regulation of Time of Distribution*

Policies regulating *when* distribution may take place are subject to the same principles of reasonableness. Again, though not directly in issue in many instances, the factual settings underlying Supreme Court and other

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missible. Such designation is generally deemed the obligation of the school: *e.g.*, ***Fujishima*** at 1359 and ***Vail*** at 598.

[79] ***Tinker***.

[80] *e.g.* ***Riseman*** at 149 n. 2 (distribution permitted provided individuals not engaged in classes of study halls); ***Sullivan*** a (distribution in class or school library may be reasonably prohibited); ***Vail*** at 598 (board may prohibit leafletting where regular classroom or school activities interferred with).

[81] *e.g.* ***Tinker*** at 513 (permissible exercise of First Amendment rights are not confined to supervised or ordained discussion in a school classroom); ***Fujishima*** at 1356 (distribution between classes and exchange in corridor); ***Jacobs*** at 12 (students on premises but not involved in classroom activities may not be blanketly prohibited from distributing materials); ***Scoville*** at 14 (classroom sales).

[82] See, *e.g.* ***Shanley*** at 968.

[83] ***Eisner*** (validated prior submission rule in part because it did not attempt to extend to off-campus distributions). See also, ***Shanley*** and ***Sullivan***.

[84] ***Shanley*** at 974.

[85] *e.g.* ***Shanley*** at 975 (school enjoined from entering zeros on student's records) and ***Fujishima*** (district ordered to expunge record of suspension).

[86] ***Sullivan*** at 1075–76 (student suspension upheld on grounds of flagrant disregard of established school regulations, never attempting to lawfully challenge rule, defying principal's request to stop distribution, and resorting to profane epithets; ***Schwartz*** at 241 (excluded from classes for "contumelious behavior" and a pattern of open defiance of school discipline apparently including the student's ignoring principal's directive not to bring papers on premises and refusing to surrender the papers on request). The exception is ***Baker***.

federal court cases patently suggest distribution cannot be limited to merely before or after school hours. Cases have expressly or impliedly authorized *non-disruptive distribution* during lunch[87] or student lounge breaks,[88] between classes,[89] at times when the distributors or distributees are not engaged or supposed to be engaged in classes, study periods, or other normal classroom activities or school duties,[90] during class periods where either similar modes of extra-curricular expression were tolerated,[91] or not expressly disapproved of by rule or teacher,[92] and even during a fire drill, in the absence of any current rule setting forth reasonable times for distribution.[93] It should not be inferred, however, that a regulation prohibiting distribution during one of the above mentioned times would be unreasonable, especially where necessary to avoid substantial and material disruption of the operations of the school.

3. *Regulation of Manner of Distribution*

Finally, the *manner* of distribution may be reasonably regulated by school authorities. In distinguishing protected from impermissible manners of distribution, the courts regularly enunciate the principle that the right to publish does not include a right to command a readership. The initial application of this principle in the school context involved two Fifth Circuit decisions involving the distribution of Student Non-Violent Coordinating Committee buttons. In one case[94] the court held the distribution of the button constitutionally protected while in the other case,[95] unprotected. One contributing factual difference between the two situations was the forceful pinning of buttons on unwilling students in the latter case.

Subsequently, the passive-aggressive distribution distinction has been noted in a number of school related opinions rendered by the Supreme Court[96] and lower federal courts including at least three appellate high school publication cases.[97] None of the three cases involved the prohibitable, aggressive manner of distribution.

In summary, time, place and manner restrictions may undoubtedly be imposed, though what may be deemed reasonable regulations are not authoritatively set out, at least affirmatively. Because of the propensity of courts to guard First Amendment freedoms, there appears to be a tendency to equate reasonable with only those regulations necessary to prevent substantial disruption or material interference with school operation. Consequently, it may be advisable for school authorities to prescribe specifically when, where, and how distribution may *not* take place, leaving the unprohibited times, places, and manner presumptively authorized. The recommendation of one federal judge, at least in terms of emphasis, is illustrative:

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[87] *Tinker* at 512; *Jacobs* at 5; *Fujishima* at 1356.

[88] *Vail* at 598.

[89] *Fujishma* at 1356 and *Vail* at 598.

[90] *Riseman* at 149, *Sullivan* at 1073, *Jacobs* (slip op.) at 11.

[91] *Tinker* (buttons and armbands had not previously been prohibited) and *Sullivan* a (generally to the effect that schools are seldom islands of tranquility).

[92] *Scoville* at 14.

[93] *Fujishima*.

[94] *Blackwell v. Issaquena County Board of Education*, 363 F.2d 749 (5th Cir. 1966), cited with approval in *Tinker* at 513.

[95] *Burnside v. Byars*, 363 F.2d 744 (5th Cir. 1966), cited with approval in *Tinker* at 505, 509, and 511.

[96] *Tinker*, n. *1* at 504.

[97] *Shanley* at 970 and 971 n. 8, *Sullivan* at 1073 n. 1.

> [The school may, by rule] prohibit . . . distribution at times and places where normal classroom activity is being conducted. Such rule may not prohibit such distribution at other times and places unless such prohibition is necessary to prevent substantial and material interference with or delay of normal clasroom activity or normal school functions.[98]

E. *Sale of Publications*

Can school authorities prohibit the sale of student publications?

Though some student publications cases have involved either policies prohibiting the sale of materials[99] or publications that were in fact sold,[100] the question whether students have the right to sell publications in school has been considered only once. In that case,[101] the Seventh Circuit Court of Appeals acknowledged both the school's interest in avoiding time-consuming and disruptive commercial activities in the buildings and the student's First Amendment interest in continuing the paper which was dependent on contributions of money. The Court, in applying the standard that where a regulation incidentally limits First Amendment freedoms, the restriction must be no greater than essential to the furtherance of the governmental interest, concluded that reasonable time, place and manner regulations would "serve the interest of maintaining good order . . . without forbidding sale . . . ."[102]

III. RULES GOVERNING CONTENT

The right of persons to lay their sentiments before the public does not mean that all expression is equally protected nor that an individual is not responsible for publishing that which is improper. The Supreme Court has acknowledged that there are certain narrowly defined categories of expression which are not protected[103] and the purpose of this section of the article will be to examine the content of student publications that have been before the courts, what has been held to be protected and unprotected, and the legal standards employed in arriving at those determinations.

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[98] *Sullivan* at 1072 n. 3 (injunctive decree previously rendered in the litigation).

[99] *e.g. Sullivan.*

[100] *e.g. Scoville.*

[101] *Jacobs* but compare Katz v. McAulay, 438 F.2d 1058 (2nd Cir. 1971) cert denied 405 U.S. 933, where a contrary result was reached on a pure solicitation issue.

[102] *Id.* at 10; see also *United States v. O'Brien*, 391 U.S. 367, reh. denied 393 U.S. 900 (1968) (incidental effect standard).

[103] *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942).

A. *Advertising and the Promoting of Non-School Interests*

Can advertising or promotional content—political and/or commercial—be prohibited in students publications?

While advertising content does not enjoy the same degree of constitutional protection as other expression, when it is incorporated in a document with non-advertising content of social or political significance, it generally, if incidentally, derives First Amendment protections. This is the case, according to a Supreme Court decision, except where the preponderance of the document is advertising, or the non-advertising content is included only with the intent and purpose of drawing First Amendment protections around an otherwise vulnerable publication.[104] Thus, the mere existence of commercial advertising in a publication does not provide grounds for limiting circulation or imposing a post-distribution sanction, particularly where the paper's survival and the students' accompanied First Amendment rights are dependent on such revenues. Though some policies expressly prohibit any non-school advertisements,[105] and one court acknowledges the possible legitimacy of such a rule,[106] the courts have largely been spared litigating the issue, at least as to commercial ads.

School rules prohibiting the inclusion of political materials including announcements of events, campaign ads, or copy promoting the viewpoint or interest of any non-school organizations have been a more common, though still infrequent, cause of litigation. Such rules patently contradict the usual federal and state policy of vigorously encouraging open expression concerning governmental and political affairs.[107] This policy of free expression of governmental and political concerns unmistakenly extends to the public post secondary[108] and secondary schools, particularly in light of the

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[104] ***Valentine v. Chrestensen***, 316 U.S. 52 (1942), (ordinance prohibiting distribution of advertising circulars held constitutional as applied to handbill 50% advertising, where evidence indicated non-advertising content was included to evade the ordinances. The principle is reflected in a number of publications policies, *e.g.* ***Riseman*** at 149 n. 2 (use of materials permitted where the educational value considerably outweighs any incidental advertising disadvantage); ***Sullivan*** at 1073 (material consisting primarily of commercial advertising prohibitable).

[105] *e.g.*, ***Jacobs***.

[106] ***Id***. at 9.

[107] ***New York Times v. The United States***, 403 U.S. 713 (1917) (National security interest not so substantial as to preclude publication of Pentagon papers); ***Rosenbloom v. Metromedia Inc.***, 403 U.S. 29 (1971) and ***New York Times v. Sullivan***, 376 U.S. 255, (1964) (criticism of individuals involved in matters of inherent public concern or public officials libelous only if actual malice shown); ***Exparte Gilliland***, 284 Mich 604, cert. denied 306 U.S. 643, reh. denied 306 U.S. 669 (1938) (criticism of judge or court should not result in contempt proceedings unless it tends to impede the administration of justice); and ***Opinion of Michigan Attorney General***, No. 4777 (1973) (Municipal ordinance prohibiting placement of temporary political signs invalid). Contrary, ***Lehman v. City of Shaker Heights***, ... U.S. .... (1974) [42USLW5116] (public rapid transit that sells advertsing space on its vehicles not obligated to accept political advertisement of candidate for office because adequate space could not be guaranteed for all candidates, appearance of favoritism or endorsement by public body, and controversy ads might engender).

[108] ***Papish v. Board of Curators of the University of Missouri***, 410 U.S. 667 (1973)

citizenship training function commonly prescribed for schools[109] and the lowering of the age of majority[110] and franchise[111] to include a significant segment of the secondary school population.

Specifically, courts have acknowledged the right of secondary students to wear arm bands in protest of the Vietnam war,[112] to establish student organizations to advance political ideas,[113] to incorporate political advertising at least where commercial is permitted,[114] and to require consistent application of rules as between political advertisements initiated or fostered by the school and those originating with non-school sources.[115]

In essence, commercial advertising generally cannot be prohibited from appearing in student publications, except where it represents the primary purpose of the material; political inclusions are even less vulnerable to exclusion; and, regulations which are applied inconsistently to basically similar advertising content are subject to challenge.

B. *Libelous Statements and Personal and Institutional Criticism*

Are libelous statements or personal criticism constitutionally protected?

Libel is the false, written publication of a statement, sign or picture which tends to bring an individual into public hatred, ridicule or contempt.[116] Such statements are generally considered beyond the scope of protected expression,[117] and may result in either civil[118] or criminal[119]

(freedom of the press cannot be subordinated to conventions of decency offended by political cartoon and four-letter-words) and *Healy v. James*, 408 U.S. 169 (1971) (University's blanket refusal to recognize S.D.S. chapter held unconstitutional).

[109] See, *e.g.*, Mich. Const., art. 8 sec., 1, which provides: "Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."

[110] The age of majority has been lowered to 18 in a number of states during the past three years, see, *e.g.* Michigan Public Act 79 of 1971.

[111] 42 U.S.C.A. 1973bb, (reduces federal voting age to 18) and 1973bb-1 (provides 18-year-olds right to vote in state and political subdivision elections).

[112] *Tinker*, but contrast remarks of Justice Black in dissent regarding the inappropriateness of political expression in schools.

[113] *Dixon v. Beresh*, 361 F. Supp. 254 (E. D. Mich. 1973) (high school obligated to recognize student organization formed to advance ideas of political nature and discuss controversial community issues, such as STRESS, a police decoy operation in Detroit).

[114] *Zucker v. Panitz*, 299 F. Supp. 102 (S.D.N.Y. 1969) (school with accepts commercial advertising cannot prohibit anti-war ad). Compare *Lehman* n. 107, Court's differentiation between display advertising on public transit vehicles or other public facilities and that which appears in periodicals or newspapers.

[115] In response to the assertion that political content of a student publication violated a school rule, the court in *Shanley* observed at 976: "It appears that some petitions and documents of a political nature, regarding a pending school board election, where distributed at the high school with the blessing and even encouragement of the administration . . ."

[116] See generally, Prosser, *The Law of Torts* (4th edition) Chapter 19 [hereafter referred to as Prosser].

[117] *Garrison v. Louisana*, 379 U.S. 64, (1964).

[118] See, *e.g.*, Michigan Compiled Laws (hereafter M.C.L.) 6000.2911.

[119] See, *e.g.*, M.C.L. 750.371 *et. seg.*

liability. Libel may result in school disciplinary action, provided, according to one court, the policy conveys adequate notice of the term's meaning.[120]

While statements that tend to injure one in the pursuit of his profession are frequently considered particularly serious,[121] constitutional interests intercede in the form of qualified privileges that may protect students who criticize teachers, administrators, school board members, or certain others. Among privileges arguably applicable in the school setting are ones that protect persons who criticize public officials[122] or figures,[123] comment on matters of public interest,[124] or communicate adverse information to others sharing a common interest.[125] In order to recover in the event a qualified privilege does apply, the complaining party must prove that the libelous statement was either known to be false when published or published in reckless disregard of its truth or falsity. Truth, of course, is an absolute defense to an action for libel, even if malice motivated the comment.[126]

Perhaps largely because of these qualified privileges, libel has not been formally alleged in school publications cases; and where mentioned in passing, the courts have generally opined in dicta that the references to school or other officials would not constitute libel. Thus, at least impliedly, references to university administrators as "despotic" and "problem children,"[127] a college president as incapable of making decisions,[128] a high school dean with a "sick mind,"[129] and various principles as having racist views and attitudes and lying tendencies,[130] a dictatorial style,[131] or extortionist methods,[132] have been libel-free. The general reaction of the courts has apparently been that these characterizations represent "mere expression with which school officials do not wish to contend."[133]

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[120] *Shanley*.

[121] The law of defamation reflects the particular gravity of such statements by making their oral publication slanderous *per se* and actionable without proof of acutal damage. See, *Prosser* at 754.

[122] *New York Times v. Sullivan*, supra no. 107. The question of who is a public official for purposes of this privilege is answered by federal rather than state law standards (*Rosenblatt v. Baer*, 383 U.S. 75, 1966) though no clear demarcation exists. Rather the determination turns on factors such as public visibility of the position held and its perceived authority over the conduct of public affairs. These criteria have been applied to find many federal, state and municipal administrators not to be public offi- cials, though other courts have held a deputy sheriff, a university student senator, and the supervisor of a county recreation area to be public officials. (See generally 50 Am Jur 2d 299). In dicta some federal courts have implied that the *Sullivan* standard may apply to school personnel. The question may be somewhat mooted, however, with the partial extension of the *New York Times v. Sullivan* standard to individuals in- volved in matters of public concern, see n. 124 infra.

[123] *Associated Press v. Walker*, 388 U.S. 130 (1967) (New York Times standard applies to public figures—those of general fame or notoriety in the community or in the forefront of public controversy in order to influence its resolution—such as a prominent retired armed forces officer whose statements against federal intervention in enrollment of black students in university had been widely publicized). (Opinion of the Chief Justice.)

[124] The qualified privilege related to comments concerning individuals engaged in matters of public or general interest is not as comprehensive as the previously men- tioned qualified privileges. Though a plurality of the Supreme Court, speaking through Justice Brennan in *Rosenbloom v. Metromedia, Inc.*, 403 U.S. 29 (1971), required a showing of actual malice whenever a defamatory falsehood related to an individual's involvement in matters of public or general concern regardless of whether the in- dividual is famous or anonymous, a recent decision by the same Court significantly constricts *Rosenbloom*. A majority of the Court in *Gertz v. Welch, Inc.*, .. U.S. .. (1974) [42 U.S.L.W. 5123] held that states be allowed to determine the standard of liability for defamation of a private individual engaged in matters of public interest, and that the strict actual malice standard applies only to the extent more than actual damages are sought.

[125] *Zanley v. Hude*, 208 Mich 96 (1919).

[126] *Garrison* and Mich. Const., art. 1, sec. 19 (the latter expressly extends only to true statements published with "good motives" and for "justifiable ends," but similar

Institutional and personal criticism of a non-libelous nature has been held to enjoy constitutional protection. Student references to school as a "waste of time"[134] or "fucked,"[135] to procedures as idiotic and asinine,"[136] or to a principal's newsletter as "school propaganda" which should be destroyed on receipt[137] generally may not be silenced. This is so even where it is asserted that such criticism undermines school authority,[138] though there is some dicta to the contrary.[139] Additionally, the expressed concern of school administrators about the negativism that pervades student publications has not gone judicially unnoticed:

> Negativism is, of course, entirely in the eye of the beholder, and presumably the school administration's eye became fixed upon the criticism by the students. . . . "criticism," like "controversy," is not a bogey, at least not in a democracy. Of course, constructive criticism is far more helpful than any other form of critique. But almost any effort to explain a different mode of operation or approach serves to illuminate the issue being questioned.[140]

The robustness of the principle is apparent from two Supreme Court passages:

> A function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are,

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language was negated in *Garrison*, at least as to public officials, where truth was held to be absolute defense.

[127] *Norton v. Discipline Committee of East Tennessee State*, 419 F.2d 195 (6 Cir. 1969), cert. denied 399 U.S. 906 (1970).

[128] *Trujillo v. Love*, 322 F. Supp. 1266 (D. Colo. 1971) (unidentified college president).

[129] *Scoville* at 14.

[130] *Schwartz* at 240.

[131] *Id.* at 240 ("King Louis") and *Sullivan* a at 1350 ("dime-store dictator").

[132] *Sullivan* a at 1348. (hypothetical administrator satirically accused of extortion).

[133] *Scoville* at 14.

[134] *Id.* at 16.

[135] *Sullivan* at 1074.

[136] *Scoville* at 16.

[137] *Id.* at 15–16.

[138] See, *e.g. Scoville*, n. 2 at 12.

[139] *Norton*.

[140] *Sullivan* n. 10 at 1072; see also, *Baker* at 526.

> or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech, though not absolute . . . is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience or annoyance or unrest. There is no room under our constitution for a more restrictive view.[141]

Its applicability to the schools has been made apparent on numerous occasions in the past five years as well as two and one-half decades earlier when the Supreme Court declared:

> [Boards of education] have . . . important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous protection of constitutional freedom of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes.[142]

Thus, in order to prohibit statements about individual school officials or employees in the performance of their duties, there must be a finding that the remarks are libelous, which probably will require proof that they were known to be false when made or made with reckless disregard of their truth or falsity.

C. *Obscene or Vulgar Content*

Can obscene and/or vulgar content be circumscribed or be the basis for disciplinary action?

Obscene content lacks constitutional protection in the schools as well as in society at large.[143] States not atypically impose criminal liability on those who publish[144] or distribute[145] obscene materials, and specifically on those who introduce such materials into the schools or to youth under 18 years of age.[146]

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[141] *Terminello v. Chicago*, 337 U.S. 1 at 4 (1949).

[142] *West Virginia v. Barnette*, 319 U.S. 624 at 637 (1943).

[143] *Roth v. United States*, 354 U.S. 476 (1957); *People v. Johnson*, 29 Mich. App. 118, 185 N.W. 2d 150 (1970).

[144] See *e.g.* M.C.L. 750.343C: "Any person who publishes or distributes . . . any book, magazine or pamphlet . . . featuring and primarily devoted to the purpose of commercial exploration, to the description . . . or suggestion of illicit sex, or sexual relations of perversion . . . shall be guilty of [misdemeanor]."

[145] See, *e.g.* M.C.L. 750.343: "Any person who knowingly . . . distributes . . . or has in his possession with intent to distribute or show . . . any obscene, lewd, lascivious filthy, or indecent, sadistic or masochistic (item) shall be guilty of a misdemeanor, and upon conviction shall be punished by imprisonment . . . for not more than one year or by a fine of not more than $1,000, or by both . . ."

[146] See, *e.g.* M.C.L. 750.343e. Whoever knowingly . . . distributes. . . . to a person

The central issue, and one which has plagued jurists as well as school administrators, is: what is obscene? While states statutorily define "obscenity" in various terms, all incorporate a three-prong text announced first in a 1957 Supreme Court decision[147] and reiterated with slight modifications in its progeny.[148] A 1973 Supreme Court "clarification" of what is obscene[149] differs in some significant ways, as reflected in parentheses, from the earlier standard. It still requires, however, the consideration of three basic questions: (1) whether the average person applying contemporary community standards (rather than national standards) would find the work taken as a whole, appeals to purient interest; (2) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by applicable state law;[150] and (3) whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value (rather than is utterly without redeeming social value). Only if all three answers are in the affirmative is the material legally obscene. The Supreme Court's review of a book, in a companion case, provides an example of what may be obscene in certain states and localities:

> It is made up entirely of repetitive descriptions of physical, sexual conduct, "clinically" explicit and offensive to the point of being nauseous; there is only the most tenuous "plot." Almost every conceivable variety of sexual contact, homosexual and heterosexual, is described. Whether one samples every fifth, tenth, or twentieth page, beginning at any point or page at random, the content is unvarying.[151]

Though the Supreme Court has authorized a slightly modified legal standard where an intended recipient group, such as children is identifiable,[152] the same basic three-prong test applies.[153] The difference is primarily that the material's appeal to prurient interest is measured in terms

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under the age of 18 years any obscene . . . matter . . . manifestly tending to corrupt the morals of youth, or introduces into a . . . school or place of education . . . for . . . circulation to a person under the age of 18 years or with intent to introduce [such], shall be punished by imprisonment . . . of not more than 1 year or by a fine of not more than $1,000, or by both . . .

[147] *Roth*, supra n. 143.

[148] See particularly, *A Book Named . . . Memoirs of A Woman of Pleasure v. Attorney General of Massachusetts*, 383 U.S. 413 (1966).

[149] *Miller v. California*, 413 U.S. 15 (1973).

[150] States statutorily define sexual content that may be obscene (if criteria 1 & 3 are satisfied) in a variety of ways. In *Miller* the Court provided examples of what it would deem appropriate state language; for instance "Patently offensive representations or descriptions of masturbation, excretory functions and lewd exhibition of genitals." To date Michigan continues only to specify the prohibition of that which is "lewd lascivious, filthy" (M.C.L. 750.343).

[151] *Kaplan v. California*, 413 U.S. 115 at 116–17 (1973)

[152] *Ginsburg v. New York*, 390 U.S. 629 (1968) amplifying the variable obscenity approach sanctioned in *Mishkin v. New York*, 383 U.S. 502 (1966), by applying it to minors. The youth as targeted recipient standard was expressly incorporated into the statute before the Court, though other courts have not suggested this as a precondition for applying the reduced standard of obscenity vis-a-vis minors.

[153] One federal district judge has implied that a non-constitutional standard of

of the targeted audience rather than the average person in the community. Even when such a reduced legal standard has been employed in the secondary school setting,[154] in no instance has the complained-of-content been held obscene. This is so, though the publications have included: a description of a movie scene where a couple "fall into bed";[155] four-letter words and their derivates,[156] "some earthy words relating to bodily functions;"[157] or a random statement that "oral sex may prevent tooth decay."[158]

In declaring such content not obscene, or concluding it unnecessary to consider the question of whether the language was obscene, the following reasons have been cited by one or more courts: the policy lacks a specific definition of sexual conduct, the description of which is prohibited under state law;[159] the document is not taken as a whole in assessing its prurient appeal or social and political value;[160] four-letter words standing alone do not appeal to prurient interest in sex;[161] basic fairness prohibits punishing students for incorporating in their publications language contained in books and periodicals in the school library or the text required in a course;[162] and finally, students, given their exposure to the protest wave of the 1960's, are not shocked by statements which would offend members of the older generation.[163]

The language so frequently objected to as obscene is more accurately termed "vulgar or offensive." Vulgar and offensive words, however, are in most circumstances constitutionally protected except where used in such a manner as to constitute "fighting words"—personally abusive epithets inherently likely to provoke the ordinary citizen to violent reaction.[164] This seems to be established, at least since a recent series of Supreme Court cases.

While older cases suggest a state interest in preventing language which

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obscenity may be applied, though the decision turns on the enforcement of a state statute prohibiting profanity and vulgarity. (*Baker* at 526).

[154] See, *e.g. Baughman* at 1349 and *Kopell* at 459. See also *Todd v. Rochester Community Schools*, 41 Mich. App. 320. 200 N.W. 2d 90. (1972).

[155] *Koppel.*

[156] See, *e.g. Papish* (headline in college newspaper "Mother Fucker Acquitted.") *Sullivan* b at 1163 ("High Skool is Fucked"); *Vail* ("You've had it now mother fucker") as quoted in an authoritative article by Robert Pressman appearing in *Inequality In Education*, No. 15 (Nov. 1973).

[157] *Jacobs* at 12.

[158] *Scoville* at 14.

[159] *Jacobs* at 11.

[160] *Sullivan* b at 1164.

[161] *Cohen v. California*, 403 U.S. 15 (197); *Jacobs* at 12; *Vail* at 599; *Sullivan* b at 1149 and 1165.

[162] See *e.g., Vought* at 1395–1396 (though student conceded the language in the publication in his possession may be obscene, court held it would violate basic fairness to punish student when similar language appeared in library periodicals and comparison would be consideration); and *Sullivan* b (schools forfeit right to object to the appearance of four letter word by sanctioning the presence in library of books with similar vulgarisms).

[163] *Scoville* at 14.

[164] *Chaplinsky*, supra n. 103.

merely offends the sensibilities of others,[165] the recent decisions, noting that language which expresses or arouses emotion may have as much meaning as language which expresses a concise idea, have called into question the sensibilities test.[166] State statutes prohibiting vulgar, offensive or profane language on bases other than imminent breach of the peace have been nullified as vague or overbroad in cases involving the wearing in a county court house of a jacket with the inscription "Fuck the Draft"[167] and the use of the word "motherfucking" on four occasions at a public school board meeting.[168] These holdings appear to doom the typical state statutes regulating such speech.[169]

This line of cases has recently been applied by the Supreme Court to a publication distributed on a university campus[170] and has been cited with approval in appellate[171] and lower federal court decisions involving publications in secondary schools.[172] Logically, the precedent should apply, in as much as the written word in the publication is less obvious than on the jacket and more easily avoided than the verbal expression. Even where this line of cases has not been expressly relied upon, the result has been the same with two possible exceptions. The two exceptions favoring school authorities date from 1969 and involve a college case[173] where "crude" though "not obscene" remarks were inferred to contribute to the court's ultimate conclusion and a California high school case[174] where two students were suspended for violating a state statute prohibiting profanity and vulgar language in the schools. The high school students had reprinted an article which contained the same four-letter word objected to in the other cases and a retouched hand on what appears to be a picture of President Nixon.

A 1973 Supreme Court decision regarding a university publication[175] undermines the earlier case by holding: ". . . the mere dissemination of ideas—no matter how offensive to good taste—on a state university campus may not be shut off in the name alone of conventions of decency." Similarly, the 1973 invalidating of a California vulgarity statute by the Supreme Court in another context[176] naturally diminishes the significance of the earlier district court decision. Additionally, a number of the arguments employed in meeting obscenity allegations are equally applicable against contentions of offensiveness or vulgarity; specifically these include: the consistency and the contemporarily exposed students arguments.

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[165] *Id.* and *Street v. New York,* 394 U.S. 576 (1969).

[166] *Cohen; Gooding v. Wilson,* 405 U.S. 518 (1972); and *Lewis v. New Orleans,* 408 U.S. 901 (1972); all discussed in 8 *Harvard Civil Liberties Law Revew,* No. 4, at (1973); *Todd,* supra n. 154.

[167] *Cohen.*

[168] *Rosenfeld v. New Jersey,* 408 U.S. 901 (1972).

[169] The Michigan statutes not atypically make blasphemy and vulgar language in the presence of women and children misdemeanors. The statutes, under which no published case law exists, provide: "Any person who has arrived at the age of discretion, who shall profanely curse or damn or swear by the name of God, Jesus Christ or The Holy Ghost, shall be guilty of a misdemeanor. No such prosecution shall be sustained unless it is commenced within 5 days after the commission of such offense." (M.C.L. 750.103) "Any person who shall use any indecent, immoral, obscene, vulgar, or insulting language in the presence or hearing of any woman or child shall be guilty of a misdemeanor" (M.C.L. 750.337).

[170] *Papish.*

[171] *e.g. Jacobs* at 13.

[172] *e.g. Vail* at 599 and *Sullivan* b at 1149 and 1167.

[173] *Norton.*

[174] *Baker.*

[175] *Papish.*

Finally, in two other cases profanity or disgusting language was alleged but not the ground for suspension.[177] Suspensions were based in both instances on flagrant disregard of school rules or disobedience rather than the content of the publication according to the respective courts.

In summary, it is established that the use of four-letter words is not tantamount to obscenity; most courts apply the three-pronged, legal standard of obscenity in the college and secondary school context, though adjusted for minors; and vulgar and profane language is generally not considered beyond constitutional protection, at least in the absence of an imminent breach of the peace.

D. *Advocacy and Incitement of Illegal Acts or Violation of School Rules*

During the twentieth century there has been a progression of United States Supreme Court cases concerning the advocacy of illegal actions: most often advocacy of the violent overthrow of the government. As early as 1919 it was suggested that mere advocacy of illegal acts did not constitute a clear and present danger as to justify restriction on First Amendment rights.[178] Succeeding decisions more firmly established the principle,[179] culminating in a 1969 opinion reversing the conviction of a Ku Klux Klan leader for advocating a criminal act to accomplish political reform:

> [T]he constitutional guarantees of free speech and free press do not permit a state to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action *and is likely to incite or produce such action.*[180] (emphasis added)

Though the facts of a 1969 university student publication case before the Sixth Circuit suggested the advocacy-incitement distinction was not being recognized,[181] its applicability has been subsequently confirmed by the Supreme Court in a case involving university recognition of an organization that acknowledges school rules:

> The critical line . . . for determing the permissibility of a regulation is the line between mere advocacy and advocacy directed to incite or pro-

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[176] *Cohen.*

[177] *Schwartz* and *Sullivan.*

[178] *Schenck v. United States*, 249 U.S. 47 (1919).

[179] *e.g. Dennis v. United States*, 341 U.S. 494 (1951).

[180] *Brandenburg v. Ohio*, 395 U.S. 444 at 447 (1969).

[181] *Norton* at 209.

> duce imminent lawless action and . . . likely to incite or produce such action.[182]

While advocacy of illegal actions has been alleged in a few secondary publication cases, the appropriate standard for sanctioning such expression in the secondary school context has not been set out expressly in a holding and the inferences are contradictory. In one case the court avoided reaching the question whether the language was protected or unprotected, even though the publication included the following:

> We have to be prepared to fight in the halls and in the classrooms, out in the streets, because the schools belong to the people. If we have to we'll burn the buildings of our school down to show these pigs that we want an education that won't brainwash us into being racist. And that we want an education that will teach us to know the truth about things we need to know, so we can better serve the people.[183]

The court merely refused to consider the question, citing another constitutional infirmity of the rule under which the student was suspended.

In another instance, a district court suggested in dicta that advocacy of "destruction of school property" or "physical violence againts teachers or fellow students" would provide a basis for prohibiting distribution without referring to the likelihood of it imminently occurring.[184] In yet another case, where school discipline policies were harshly criticized and students were urged to destroy "propaganda" instead of carrying it home to their parents, the appellate court discounted the mere advocacy formulation, concluding that the publication did not constitute a "direct and substantial threat to the effective operation of the school."[185]

Given the Supreme Court requirement of more than advocacy in the university setting and the divided precedent in the lower courts as to the appropriate standard in the secondary school context, the resolution of the issue, in light of the possible ease of swaying the arguably more vulnerable high school students to engage in conduct with serious personal and possibly societal consequences, is uncertain. An examination of the thread running through all the secondary publication cases, however, suggests that the preferred formulation of the legal issue may be in terms of whether the publication caused or provides a reasonable basis for forecasting substantial disruption which more nearly approximates the incitement rather than mere advocacy standard.

Of course, the fact that students may be free to advocate the modification or even violation of a school rule does not mean they may violate a reasonable and lawful rule with impunity,[186] nor that they cannot be required to agree to obey such rules as a condition of exercising their expression.[187]

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[182] *Healy* at 188; see also, *People v. O'Neal*, 22 Mich. App. 432, 177 N.W. 2d 636 (1970) (prosecution upheld where defendant 12 hours after Detroit riot called on crowd in adjacent Highland Park to burn and kill with result some persons advanced on police).

[183] *e.g., Quarterman* at 55–56.

[184] *Vail* at 660.

[185] *Scoville* at 12.

E. *Fighting Words*

Can fighting words be excluded from publications or result in sanctions to students, authors or distributors?

"Fighting words," offensive, derisive and annoying epithets which are likely to provoke the average person to retaliate and thereby cause a breach of the peace, are within the "narrowly limited class of speech, the prevention and punishment of which have never been thought to raise any problem."[188] At issue in the leading Supreme Court case on the matter was the reference to a police officer as a "God damned racketeer" and a "damned Fascist"[189] in violation of a state statute prohibiting the face-to-face use of epithets when they would likely cause a breach of the peace.

While a number of secondary student publication cases expressly acknowledge the fighting word restriction on expression,[190] not even the most vilifying remarks have been argued by school authorities to be within the fighting words prohibition.[191] Perhaps significantly, the litigated cases involve derisive words directed primarily at school personnel, who, by virtue of their maturity, are less susceptible to an immediate physical reaction.

Consequently, though words which might invoke a breach of the peace may be different today than thirty years ago, and though the court has recently demonstrated less of an aversion to coarse language, content which can be characterized as fighting words may still be prohibited, particularly when aimed at a student or group of students. Presumable, racial or ethnic epithets or slurs[192] may fall into the classification of fighting words in a desegregated school, as may other remarks which experience in the school indicates will beget such a response. Fighting words are sometimes subsumed within the broader category of materials that cause substantial disruption, discussed next.

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[186] Though courts refuse to enforce unconstitutional rules or laws and nullify sanctions imposed because of their violation (*e.g. Quarterman* at 61, ***Fujishima*** at 1359; ***Vail*** at 598), some courts have held that students may be disciplined for defiance of valid school rules or authority even though the assertion of authority is inextricably interwoven with the enforcement of rules of questionable constitutionality.

In the earliest of these cases *(Schwartz)* a federal district court without deciding the constitutionality of a broad publications prohibition concluded that it was "far from clear that the [student] was suspended because of protected activity under the First Amendment rather than flagrant and defiant disobedience of the school authorities" (at 291). The student had, besides disseminating or threatening to disseminate the paper on or off school premises, ignored a warning not to bring the paper on school premises, refused to surrender the paper, attempted to influence another student to engage in similar activities, and appeared in school in defiance of suspension order.

Besides being followed by another federal district court (***Graham** v. **Houston Independent School District***, 335 F. Supp. 1164, [S. D. Tex. 1970]), the case has been cited approvingly by an appellate court (*Sullivan* at 1076). In the later instance, however, the basic publications regulation being disregarded was constitutional, having been explicitly deemed not unconstitutional per se, nor vague or overbroad (at 1076).

[187] ***Healy***.

[188] ***Chaplinsky***.

[189] ***Id***., at 569.

[190] See, *e.g.* ***Eisner*** at 806 and ***Baughman*** at 1349 (reference to prohibition on material which is "grossly insulting to any group or individual").

[191] ***Sullivan*** a, ("words do not even approach the fighting words of Chaplinsky").

F. *Content which Results in or may Result in Substantial and Material Disruption*

Can publications which cause substantial disruption or material interference with the operation of the school be prohibited?

"In the context of the 'special characteristics of the school environment,' the power of the government to prohibit 'lawless action' is not limited to acts of a criminal nature."[193] Student conduct which "materially disrupts classwork or involves substantial disorder or invasion of the rights of others is . . . not immunized by the constitutional guarantee of freedom of speech."[194] This category of proscribed content, as that in D and E above, has its origin in the historical clear and present danger standard and represents a translation of that standard in light of the special circumstances of the schools.

Substantial disruption has been held to exist in a secondary school button case,[195] approvingly quoted by the Supreme Court, where large numbers of students foisted buttons on unwilling students, halted class sessions by parceling them out, left class to distribute them, and threw them through open windows into classrooms. This is in contrast to another case[196] decided by the same court and involving the same buttons, in which the disruption caused by the distributing of the buttons to desirous students was held to be insubstantial.

It is very significant to note that in only one instance has a secondary student publication been found to be disruptive in fact.[196a] Officials of the school, however, are not obligated to stay the reasonable exercise of restraint until disruption actually occurs.[197] Precautionary steps may be taken when facts exist which ". . . might reasonably [lead] school authorities to forecast substantial disruption or material interference with school activities . . ."[198] Though an authoritatively stated and universally acknowledged principle in student publication cases, its application has proven somewhat elusive to school personnel and judges alike, primarily because the Supreme Court went on to admonish that "undifferentiated fear or apprehension of disturbance is not enough to overcome the right of freedom of expression."[199]

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[192] *Guzick v. Drebus*, 431 F.2d 594 (6th Cir. 1970). Though cast in terms of potental disruption, the wearing of a button wishing Martin Luther King a "Happy Easter" shortly after his Spring assassination might be contended to represent fighting words.

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[194] *Tinker* at 513.

[195] *Blackwell v. Issaquena County Board of Education*, 363 F.2d 749 (5th Cir. 1966), cited in *Tinker* at 505.

[196] *Burnside*.

[196a] *Baker* at 522.

[197] *Butts v. Dallas Independent School District*, 436 F.2d 728 at 731 (5th Cir. 1971).

[198] *Tinker* at 514.

Consequently, the Supreme Court has concluded that the reasonable forecast of disruption standard was not met by the evidence before the court: specifically, that the armbands "caused comments, warnings by other students, the poking of fun at them, . . . a counterwarning by an older football player,"[200] as well as diverted students' minds from their regular lessons[201] and posed a situation that might evolve into a difficult-to control demonstration since friends of a former student killed in the war being protested were still attending the school.[202]

Though shortly after this case the Supreme Court declined to review a decision in which the Sixth Circuit Court of Appeals upheld a university's suppression of a publication which "could conceivably cause an eruption on the campus which would disturb the functioning of the university,"[203] the trend since that case has been decidedly more demanding of school authorities. This has been particularly so in the application of the forecast standard to student publications cases, with virtually every court either concluding that school authorities were acting on "undifferentiated fear" or admonishing them that they should be acting on "substantial"[204] or "demonstrable"[205] factors giving rise to a reasonable forecast of disruption.

Thus, an assistant principal's testimony that the attitude of the school somehow changed during a mini-crisis, allegedly related to the appearance of an issue of a student publication which discussed "controversial issues" such as advocating a review of marijuana laws and proffering birth control information, was met with this judicial rejoinder:

> While this court has great respect for the intuitive abilities of administrators, such paramount freedoms as speech and the press cannot be stifled on the sole ground of intuition. . . . We feel certain that the school administration can appreciate |that the assertion cannot be accepted| . . . unless it is substantiated by some objective evidence to support a reasonable 'forecast' of disruption or actual disruption.[206]

Similarly, a court rejected the argument that a student could be disciplined for the non-disruptive distribution of a leaflet during a fire drill on the speculative grounds that students might use or even instigate a fire drill in order to engage in disruptive activities.[207] Of course, the court acknowledged the authority of the school to develop time, place and manner regulations and to apply them prospectively to prohibit distribution of literature during fire drills.[208]

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[199] *Id.* at 508.
[200] *Id.* at 517.
[201] *Id.* at 518.
[202] *Id.* at 509 n. 3.
[203] *Norton.*
[204] *Vail* at 600.
[205] *Shanley* at 974.
[206] *Id.*
[207] *Fujishima* at 1359.
[208] *Id.*

Additionally, a like result was reached in a case involving the sale to 60 students of a publication which criticized a discipline policy, imputed a sick mind to a dean, and urged the destruction of school propaganda. The court concluded that the facts "leave no room for reasonable inference"[209] that the board's "action was taken upon a reasonable forecast of a substantial disruption of school activity."[210]

Finally, the Supreme Court in 1973 had the opportunity to apply its forecast test to a university case involving the nonrecognition of a local chapter of Students for Democratic Society.[211] In response to the university's assertion, based substantially on the actions of other SDS chapters on other college campuses, that "prospective campus activities were likely to cause a disruptive influence," the Court concluded there was an insufficient evidential basis to support the conclusion that the organization posed a substantial threat of material disruption.

Even though the publication does not contain unprotected speech and neither the content nor the manner of distribution is inherently disruptive, students whose viewpoints differ with the ideas expressed may react in a disruptive way.

The long string of legal precedent that holds an individual cannot be made to forfeit a constitutional right because others are opposed to its exercise provides a backdrop for student publication cases. For instance, where a mob, in reaction to a speaker critical of political and racial groups, broke windows in an auditorium, attempted to obstruct those entering the building, and chanted names and threats, the Supreme Court upheld the speaker's right of expression, observing:

> A function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with the conditions as they are, or even stirs people to anger.[212]

A not dissimilar case was presented the Supreme Court in 1969.[213] A peaceful march in support of ending school segregation in Chicago was met in the vicinity of the mayor's house by a rapidly increasing throng of over 1000 persons who taunted and threatened the black marchers, threw rocks and eggs, stopped cars in the marchers' path, sang the Alabama Trooper song, and held Ku Klux Klan signs aloft.[214] The police, after some efforts to protect the marchers, ordered the marchers to discontinue their activities because of the unruliness of the crowd. When the marchers refused, the police arrested them. The convictions were subsequently reversed.

The basic principle—that at least in the absence of authorities exhausting all available alternatives, peaceful expression cannot be suppressed because a hostile reaction poses a threat which authorities fear they could not contain—has been applied with varying degrees of explicitude in a number of school cases, some of which have involved publications. Though the landmark armband case did not address the issue directly, it included carefully worded reference to the "silent, passive expression of opinion, unaccompanied by any disorder or distribution *on the part of the petitioners*"[215] (emphasis added) and the existence of "no evidence whatever of petitioners' interference . . . with the school's work or collision with the rights of other students . . ."[216]

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[209] *Scoville* at 14.

[210] *Id.* at 13.

[211] *Healy.*

[212] *Terminello* at 4; but see *Shanley* n. 6 at 969 which states that if the facts of *Terminello* were presented in the school setting a contrary result would be reached.

[213] *Gregory v. Chicago,* 394 U.S. 111 (1969).

[214] *Id.* at 126-130 (appendix to concurring opinion of Justice Black).

Court of Appeals decisions involving secondary students in at least four Circuits touch on the issue more expressly, as have a number of district court cases.

One of the early decisions involved a teacher who contended that the hair length of his students was "inherently distractive" and the source of a strained relationship. The Court of Appeals for the Seventh Circuit responded that, unless school officials have "actively tried and failed to silence persons actually engaged in disruptive conduct," it would be "absurd to punish a person 'because his neighbors have no self-control and cannot refrain from violence.' "[217]

On the other hand, a case decided at nearly the same time but in the Sixth Circuit, failed to apply the principle. Students were prohibited from wearing Student Non-Violent Coordinating Committee or "SNCC" buttons, largely because of the reaction of other students. The court, based on the history of divisiveness and disruptions occasioned in the past at the racially mixed school by a variety of buttons inscribed with such "inflammatory" messages as "Happy Easter, Dr. King," "White is Right," or a mailed black fist, upheld the school rule prohibiting the wearing of any buttons.[218] This case may be distinguished as being based on particular experience in the school.

The student publications cases have consistently acknowledged, and where the situation presented itself, applied, the principle. For example, one appellate court queried the board whether it anticipated that "school officials will take reasonable measures to minimize or forestall potential disorder and disruption that might otherwise be generated in reaction to the distribution of unpopular opinions, before they resort to banishing the ideas from school grounds"[219] while another court more directively declared:

> Those students who would reasonably exercise their freedom of expression should not be restrained or punishable at the threshold of their attempts . . . merely because a small, perhaps vocal or violent, group of students with differing views might or does create a disturbance.[220]

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[215] *Tinker* at 508.

[216] *Id.*

[217] *Crews v. Clones*, 432 F.2d 1259 at 1265 (7th Cir. 1970).

[218] *Guzick.*

[219] *Scoville.*

[220] *Shanley* at 974.

Additionally, federal district courts have applied the principle where recipient students placed the publication in towel dispensers, sewing machines, or otherwise littered school premises.[221]

In summary, though some contrary precedent exists in other student cases presenting particular factual circumstances, courts in the student publications context have regularly distinguished disruption caused by the authors or distributors from reactive disturbances by others, and have obligated school officials to actively discipline those who are in fact disruptive before silencing those engaged in the peaceful exercise of expression.

G. *Other Content*

The preponderance of the unofficial high school publication cases restrict prohibitable or punishable content to that which may legally be circumscribed: essentially that which is obscene, libelous or inflammatory as delineated in the preceeding pages. One appellate case, however, refused to so delimit the categories of materials, acknowledging there may be specific problems that require "individual and specific judgments."[222] The court did, however, hasten to add: "the school board's burden of demonstrating reasonablenes becomes geometrically heavier as its decision begins to focus upon the content of materials that are not obscene, libelous or inflammatory."[223]

IV. CONCLUSION

The foregoing should make it apparent that a substantial body of precedent exists to guide school officials in the development or revision and implementation of policies governing unofficial publications in the schools.[224] The precedent is generally divisible into that regulating distribution and that affecting content, with the majority of the case law being constitutional in nature and federal in origin. Litigated issues discussed in the proceeding portions of this article are summarized by means of a checklist whch may be of utility to practicing educators, attorneys and students in reviewing and assessing, and then developing of revising district policy.

Checklist for Policy Review and Revision

General

1. Does the district have a written policy governing unofficial publicacations?
2. Are the sanctions for violating the policy pre-established and known to the students?

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[221] *Sullivan* a, at 1342.

[222] *Shanley* at 971.

[223] *Id.*

[224] For a cogent analysis of these principles as they apply to school-sponsored publications, see Pressman, "Students' Right to Write and Distribute," *Inequality In Education*, No. 15 (Nov. 1973).

Distribution

3. Are students required to submit publications to school officials for approval prior to distribution?

4. If prior approval is required, are adequate procedural and substantive protections incorporated to protect the student's First Amendment rights, including:
   a. a definition of distribution applicable to various types of materials
   b. a submission procedure and designated reviewing authority
   c. a speccified time limit for a decision on distributability
   d. a reasonable and prompt appeal mechanism with a stated time for decision on appeal
   e. an understandable delineation of what content is prohibited, and
   f. a provision protecting the non-disruptive distribution of materials from reactive disruption?

5. Are *reasonable* regulations governing the time, place and manner of distribution established and incorporated in the policy.

6. Are restrictions on the sale of publications only as great as necessary to avoid substantial interference with the educational process?

7. Does the policy shield students from retaliatory actions of school officials by allowing the distribution of anonymous or conditionally anonymous materials?

Content

8. Does the policy restrict the authority of school officials to prohibit or punish content to only that which is legally proscribed:
   a. Advertising only when it dominates the publication or is accompanied by non-advertising content for demonstrably dubious purposes.
   b. Unprivileged libel, but not non-libelous personnel and institutional criticism.
   c. Matter that is obscene or pornographic as to minors based on the prevailing legal standard, but not mere vulgar or offensive language.
   d. Content which incites imminent illegal action or violation of school rules, but generally not content merely advocating illegal actions or violation of school rules which is not likely to occur.
   e. Words likely to provoke the average person to physically retaliate, not words that may provoke the most sensitive of students.
   f. Content which results in or provides an objective basis for forecasting substantial disruption but not content which may result in substantial disruption.

9. Are the prohibited categories of content precisely defined, especially if a prior approval scheme is contemplated, in terms that are narrow, objective and understandable to the average high school student?

JUVENILE COURTS AND PUBLIC SCHOOLS: SOME STEPS TOWARD A MORE CONSTRUCTIVE RELATIONSHIP

MARCIA MACMULLAN

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By way of introduction of the topic of the schools and the juvenile courts, an anecdote illustrates the typical expectations of school principals regarding the work of the juvenile court, as recently as seven years ago. Late one afternoon in the winter of 1967, shortly after I joined the court staff, the receptionist at the juvenile court reported to me that a mother and father, with son in tow, urgently demanded to see an Intake worker. Although the court had no claim filed concerning this family, or knowledge of one, the family insisted to the receptionist that they had come to the court "on orders" to appear before the judge. I invited them into my office; they were clearly working people, a bit rumpled and careworn, and the boy, thirteen years old, seemed quite frightened. Their story came out quickly: they handed me a note from the principal of the boy's junior high school which stated that they were "required to report to the juvenile court," and that the boy "could not return to school without a note from the judge." The boy had been suspended, the note continued, for skipping school. Clearly, the expectations of this principal were that the court would scare the boy into attending school. Clearly also he believed that the court existed to enforce the school's disciplinary decisions. While the naivete of this particular principal was somewhat exceptional, his conception of the purpose and function of the juvenile court was not. And while times are changing, and the due process rights of students are now coming under increasing protection of the federal and state courts,[1] I regret to say that the purpose of the juvenile courts is to uphold and defend the disciplinary actions of school administrators is still very widespread. This conference on Student Rights and Responsibilities is therefore most timely and necessary if the relationship of schools and courts is to be properly adjusted.

The public schools and the juvenile courts—and indeed, the entire juvenile correctional system—display a symbiotic relationship in that, as two unlike organisms, there is an obvious advantage to both in cohabitation. (Some cynics claim that the court provides the drainage system for the schools!) Comparing the juvenile court with the public schools, the schools clearly dominate. The schools constitute the landscape and territory within which the work of the juvenile court is carried out. Schools are both a part of the problem called juvenile delinquency, and a substantial portion of the solution. In a letter to the Ann Arbor School Board, regarding the 1970 school discipline policy, Judge Francis L. O'Brien summed up the impact of the school upon the court's caseload:

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[1] For an authoritative review see Dimond, Paul R. "The Constitutional Right to Education," *Hastings Law Journal*, Vol. 24, No. 6, May 1973.

> "The high percentage of cases with which the Washtenaw County Juvenile Court deals involve young people of junior high school age who are seriously deficient in academic skills, particularly reading, the fundamentals of mathematics, and general knowledge requisite for social studies. These children also display a belief that they will eventually fail, and exhibit a reluctance to attend school on a regular basis, and a resistance to certain aspects of the academic program. Their presence in school is enforced by pressure from parents, the court and court personnel, as well as school personnel. While there may be superficial reasons given by the child for his failure to attend school and for his disruptive behavior, an in-depth investigation indicates that the true reason in most cases is his inability to compete with his fellow students. . . ."

Judge O'Brien's observations are widely shared by juvenile judges throughout the State of Michigan. However, as a survey conducted in 1927 by the judge has revealed, patterns of exchange between schools and juvenile courts throughout the state vary remarkably from apparently total cooptation of the court by the local school districts, to wide separation of functions with respect to discipline in the schools. Some probate courts in the state of Michigan regularly confer on an informal basis with the referring school regarding student absenteeism, with the court providing both the manpower and the norm-enforcement authority either to return children to school or place children in court-administered schools. It is not unusual for some courts to detain youngsters in secure custody in order to make them attend a school program. (I observed such a practice in another county only a year ago.) At the other end of the scale, some courts refuse aboslutely to deal with school truancy both on legal as well as philosophical grounds.

In Washtenaw County schools are required to: (1) demonstrate that an investigation has been made showing that neither the parent or the school are responsible for the truancy of the child; (2) that all possible alternatives have been provided to remedy the child's avoidance of school; and (3) that the school will provide a plan for the readmission of the child, if under suspension, The Washtenaw Court's relatively strict criteria for the acceptance of truancy petitions, formally enunciated by the court in 1972, has contributed to the virtual extinction of referrals from schools of children who are truanting.

Obviously, the court can to some extent regulate the flow of cases from the school by the way in which it deals with school truancy problems. A loose or "easy access" policy on truancy matters generally results in a high number of youth referred to the court for this problem, while the reverse is true for a strict Intake. However, lest we mistakenly assume that the problem which we call truancy goes away if the schools stop referring it to the courts, the grim data on juvenile delinquency generally will demonstrate the magniture of *school-failure* problems. For example, a study conducted by Mrs. Peg Nyboer, head teacher at the Washtenaw County Juvenile Detention Home, established that the average detained youth was functioning 2.2 years below grade level.[2] Mrs. Nyboer's study involved 594 youth, tested over a period of five years with the Wide Range Achievement Test. Since Washtenaw County receives many transient youths from other counties or states, it was possible to compare youngsters according to geographic origin; underachievement in reading, math, and spelling varied only slightly according to the school district from which the detained child came. Governor Milliken's recent report that "91% of those committed to prison in 1972 never entered high school" places the school casualty figures on a much broader, state-wide scale.[3]

The implications of the high correlation between apprehension for delinquent behavior and underachievement, as well as absenteeism from school, have been clear to court and school personnel for many years. Solutions, however, have been far from obvious either to courts or schools, given societal expectations that offending or non-conforming children should be punished, the spiraling costs of regular public school education, and the pressures on school boards and administrators to satisfy the educational demands of the dominant society. It appears that as basic reading and mathematics skills become essential to acceptance and even survival in our technicolored, cybernetic society, our response has been to eliminate greater and greater numbers of children from the "mainstream" curriculum.[4] This response has led to the creation of a parallel system of secondary education within the juvenile court and correctional institutions. We need only to look at the purposes claimed for the Boys and Girls Training Schools, or the Cassidy Lake Technical School, to recognize society's commitment to compulsory education.

If it seems ridiculous for the taxpayer to support two systems of secondary school education, one should undertake to convince parents whose children have been assaulted, the PTO whose school building has been vandalized, or the school board charged with providing safe and accredited schools, with the argument that behaviorally disruptive children have a right to a public school education.

Political pressures have led schools and courts to create all kinds of peculiar, and sometimes innovative, special alternative school systems. For example, in Washtenaw County, the court, with strong citizen support, has developed a unique program which supplements, rather than parallels or supplants, the public school. This is the Washtenaw County Vocational Residential Center, started in 1971 with a federal grant matched by donations from the citizens of the county. The Vocational Center provides remedial education and job placement service to youngsters under juvenile court jurisdiction who live in their home communities, as contrasted with institutionalized youth. The Study Skills Program supplements the regular academic schedule of a court youth with personalized, programmed instruction designed by the Center's teachers to fit each individual's needs and interests. Whenever possible, the Center helps youngsters enrolled in the "mainstream curriculum" schools on a tutorial, individual basis. This approach distinguishes the Center from other alternative school projects in which youths are separated in special classrooms. Of course, several confirmed drop-outs appear in the juvenile court population; for these, the Center provides training for the GED along with job placement and other practical assistance.

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[2] Contained in Washtenaw County Juvenile Court Six-Year Report 1967–1972, pp. 43–45.

[3] Quoted in *Ann Arbor News* article, p. 1, March 12, 1974.—See supplementary note.

[4] Testimony submitted to the Michigan House Appropriations Sub-Committee on Education in April, 1973 estimated that 20,000 youths between 12 and 18 require remedial education and social services.

The "Voc Center" has provoked much controversy and interest, since it does not fit into any of the typical molds for either a special program within a public school, or a court-administered state and county-funded substitute school system. Like so many other specialized, human service programs, the Center has been fighting for its financial survival, as federal support reaches the cut-off point, and the local community faces decisions about program and funding priorities.

Perhaps a most far-reaching aspect of the local juvenile court activities has been related to efforts to secure financial backing from the public school system. In 1973, Judge O'Brien representing the juvenile judges, brought to the attention of the State Legislature the plight of specialized, alternative school programs for children of the juvenile court and/or children identified as behaviorally disruptive. Many professional educators throughout the state joined the Judge in his appeal. The coalition of court and school personnel which presented testimony before the House Appropriations Sub-Committee on Education in April, 1973, emphasized that the "Mandatory" Special Education Act excludes children of normal intelligence, though academically impaired. The legislature responded favorably to this appeal, and enacted Section 48 of the 1973–74 State School Aid Act. The provisions of this section are as follows:

> "Section 48. From the amount appropriated in section 11, there is allocated not to exceed $500,000.00 to applicant districts or intermediate districts for nonresidential alternative juvenile rehabilitation programs, which shall be defined as programs for children and youth who have been found to need remedial academic and social rehabilitative services. To be eligible for funding of salaries from legislative appropriations the county board of commissioners of the county in which the program is conducted or the supervising school district shall, by resolution, agree to fund the balance of the cost of the program. The district or inter-

> mediate district in which the program is conducted shall be responsible in cooperation with the juvenile court of the county for supervising the program and the district may apply for state and federal moneys for reimbursement of $7,500.00 for the salary of each professional program personnel as required. The program shall be evaluated annually by the department of education."

The implications of Section 48 are far reaching. It has been estimated that if all of the children currently rejected, by one method or another, from regular school programs, were provided with an education under Section 48, the reimbursement to program personnel could reach $18,750,000. Obviously, $500,000.00 is not a sufficient amount. The collaboration of courts, schools, and county government envisaged by Section 48 is truly innovative and represents a threat to some school administrators and probate judges. However, Section 48 has provided the incentive for at least one, and potentially more, experiments in cooperative arrangements. The Washtenaw County Youth Facilities Network, briefly described here and elaborated elsewhere, represents one response to the challenge of Section 48. In essence, the Youth Facilities Network is an attempt on the part of several project administrators from different school districts to team up, pool resources and talent, and overcome the territorial barriers which typically defeat a rational system of educational and social services. By making a common compact to work together, and jointly submit applications for funding under Section 48, the 9 projects representing 6 school districts in Washtenaw County have committed themselves to a common standard of performance, and common goal, with respect to "disruptive" or non-conforming youth. The role of the court, within the network, is that of watchdog, to make sure that due process is afforded to any child entering any of the YFN programs. The court also participates in an advisory capacity in program design.

It is entirely possible that Section 48, and all that potentially may flow from it, is an anachronism. Efforts are already under way to eliminate this section in future school appropriations bills, but so are efforts to preserve and increase such appropriations. On April 9, another hearing will be held in Lansing to take testimony an Section 48. The section contains a model for the relations between the schools and the courts, *and* the county government simply by establishing the premise that these three institutions together have an obligation to provide for the education of the county's children. Surely in these times, when taxpayers are weary of the failures of the criminal justice system, and the senseless, costly battles over bureaucratic territory, any effort to bring institutions together toward the great common need to educate and project children is worthwhile.

With the development of alternative school programs, briefly mentioned here, along with the proliferating movement to divert children from the juvenile justice system—exemplified in Youth Services Bureaus—an attrition of juvenile court involvement in the provision of education to court-affiliated youth should come about. Yet it is most unlikely that the need for court intervention in school matters will disappear. On the contrary, given the increasing necessity of adequate education, the child's constitutional right to an education becomes even more significant and, therefore, the demand upon the juvenile, as well as superior courts, to protect individual youngsters from arbitrary disciplinary action becomes increasingly important. The courts, after all, are intended to filter and mediate disputes between individuals and societies, and it is in this role that the juvenile court is most sensitively geared to consider the reasonable requirements of the school and the needs and rights of the individual child.

Supplementary Note

According to the Office of Criminal Justice Programs:

> "91% of those committed to prison in 1972 were performing significantly below high school level."
> (rather than 91% of those committed did not enter high school.)

PROBLEMATIC YOUTH AND THE SCHOOL'S RESPONSE

PAUL R. HELBER

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For over fourteen years I have worked with problematic young people. At different times and at different agencies they were entitled "delinquent," "pre-delinquent," "emotionally disturbed," "mentally ill," "socially maladjusted," "incorrigible," "disruptive," or just "bad kids." I have had contact with these young people while serving in a variety of capacities. These include recreational instructor, recreation director, teacher of emotionally disturbed, teacher of socially maladjusted, head teacher, assistant director of special education, and finally director of the Washtenaw Youth Services Bureau. I have illustrated these divergent positions and varied roles in working with problematic young people, to provide some credibility to some of the positions I take in this paper.

When I first began dealing with young people in trouble, it was while I was an undergraduate pursuing my degree in education of the emotionally disturbed. The current philosophy that was being expounded was that most of the problems these young men and women were having could be attributed to social causes. The promulgation of special education programs was intended as the one saving grace for these students.

As I first began my work, it was as a recreation instructor employed by the court. I thoroughly believed, and advocated to the young people, that their problems could be significantly reduced if they really worked in school. Whether it be in some classes or all classes was irrelevant, but that the educational program was an absolute necessity for them in their lives.

My first teaching experience was an experimental program at the Detention Home while I was still an undergraduate. At the end of a three-month program, I came away elated and thoroughly entrenched in the belief that school was the answer. As I look back on those times it was my exhuberance and total dedication to the program that made it so attractive to the youngsters. The attendance rate in this voluntary progam exceeded 90%, throughout the duration of its operation. Interest was always high and the students seemed to be very satisfied with some of the successes they were finding.

As I finished my degree and went on to teaching some very seriously disturbed and delinquent young men and women, I continued in my belief that the educational avenue was the major answer to the resolution of the students' problems. A complicating feature was that I was dealing with individuals who had experienced all of the failures that society can provide to young persons. I was seeing delinquents who were in a maximum security unit at Boys Training School, and seriously disturbed youngsters who were locked up in a mental hospital and an intensive psychiatric care unit. These youngsters had experienced all of the failures that could possibly be heaped on to any group of individuals. So the successes that were found within the classroom were valuable in rehabilitation efforts for these students. At least, in self-concept areas, the educational programs were very beneficial to these young people.

My first real experience with the public schools came as a teacher at the County Detention Home, in my hometown. Part of the role of the classroom teacher in the Detention Center was a liaison person and follow-up counselor for the students re-entering the public school program. Time after time, I found that these young men and women who were appearing to have success while in the detention home school, had public school doors slammed shut on them. Many times the students who were re-entered only lasted a handful of days before, they too, were rejected by the school system. At that juncture, I seriously began to doubt the relevancy of the mainstream public school program for these students. This concern has been reiterated to me many times over in the last several years, in contact with the public schools. Some individual school districts, schools, or individual employees of a school are very effective in dealing with the problems that these young people exhibit. However, philosophically the schools seem not to be tuned in to the problems at home and in the community demonstrated by their students.

One of the most interesting situations that I have experienced in recent years has been what I will entitle the "buffalo phenomenon."

1. The student decides that he really is fed up with school. He has been a regular truant for some period of time, or is disruptive in the class because he is unable to succeed with the assignments
2. The teacher is fed up with the student. He is tired of the disruptions and all the individual attention necessary to serve this youngster.
3. The principal is sick of having the same face come to his office after each kick-out or a disciplinary action that has been taken.
4. The parent is afraid of the school, social agency involvement or potential court intervention.

So we come to the "buffalo phenomenon." The group sits together; the parent, the student, the principal and all commiserate on the terrible circumstance. The student explains how he never wants to be in this "damn" school again, anyway. The principal says that he has had it up to his neck with difficulties, and his only choice is to go to the court. The parent is fearful of the court situation and readily expresses that. So the resolution of the problem is . . . "if you, parent, don't make a big deal about it . . . and you, kid, don't want to be here . . . I, as representative of the school, will just let the whole thing slide, (but I don't want to see your face back here any more)." So, the family is "buffaloed" into having the youngster drop out of school!

In the last three years, my staff and I have seen dozens of situations similar to this, and have intervened in many of those cases. This type of situation and the previously stated background information should put into perspective some of the strategies I suggest for "problematic youth." The word problematic is also key, as I feel that young people are not necessarily, or even usually, "the problem."

Strategies for School Intervention and Change

Robert D. Cain, Jr., the Director of the National Center for Youth Development, states that "second only to the family, our public education system is the major social institution which has more contact with, and potential to have a positive impact on children and their families, than any other social institution in American society." I would agree that there is potential for considerable positive impact. However, I also feel that no other social institution in America contributes so highly to delinquency. The education system often institutionally avoids responsibility in this area. When we look at the delinquent population in America, we consistently find long histories of academic deterioration and school failure. The willingness of school to define disruptive behavior as psychic deviancy and to overlook serious skill deficiencies which prohibit active learner participation in the classroom, contributes heavily to the process of premature negative labeling. For instance, in a typical county in Michigan, schools annually refer approximately 100 youths to the juvenile court. This constitutes about 13% of the court caseload. Most of these referrals center around school truancy, with occasional requests for assistance due to problems of incorrigibility or other juvenile status offenses. In addition to these, another 800 allegations are brought before juvenile court by the various police agencies. Many of these allegations are brought against youth who may be considered as alienated from the schools systems, experiencing acute failure, both socially and academically, and in general being deprived of a useful education. These conditions are perpetuated by a national tendency toward continual use of the juvenile court as a first choice in handling school related behavior problems. Secondly, these conditions are perpetuated by an orientation which leads schools to spend much of their time documenting deviant behavior, in order to establish the need for assistance with these youths. This concentration on observing and finding deviant behavior serves to further alienate youth from the educational institution, and hence to weaken their attachment to school.

The scarcity of personalized education and attention to reading, math and other skill deficiencies among secondary school students, insures increasing strain and resulting delinquency by institutionally denying youths access to the most rewarding positive role in the school environment—academic success. Such constant frustration as is felt by youth in being made to bear the guilt for deficiencies in their environment, further increases the alienation of these young people.

I am not suggesting that school administrators and teachers are plotting the delinquency of our nation's youth. There are many structural barriers which disallow attention to the needs of predelinquent children. One of the most obvious is the gigantic educational plants that are constructed all over our country. As a young person goes from a very individualized family-like setting in the elementary school, he moves toward increasing anonymity in the junior high school, and finally in the high school program. The facilities are huge, with large classes, and subject-matter-constructed curricula. Secondly, is the manner in which resources are allocated to education, and the quantity of those resources. Schools, for the most part, seem to follow a logical pattern in program development. They respond to those areas in which money is available to sustain their efforts. Most will assess their first priority as being in the area of general education. Basic to all education programs is a curriculum aimed at the middle third of our nation's youth. When resources allow, special programming may begin in both directions. However, in terms of dollar allocations, it's fairly clear that most school systems allocate far more money in support of the upper achieving students than is spent with the lower third, or poorer achievers. For instance, we are all aware that at times of financial crisis, reading programs are often among the first to be discontinued, and sports are among the last. It is a sad, but true fact that schools get far more support from their communities for sports programs than they do for the literacy of their students.

Making money available for individualized programs is *not* the answer, in and of itself. We are all aware that grant programs, and maintenance of effort for those programs, do not correlate highly. However, such program support does help, because, if nothing else, it captures the attention of educational leaders. When state and federal monies are made available for reading programs, basic skills programs, alternative education, individualized instruction and other such programmatic efforts, local educators seem to find new concern and energy which can be used to help our potentially delinquent populations. Schools currently are given the legal charge to serve young people until they attain the age of sixteen. However, they have no legal charge or legislated responsibility as to the quality or quantity of education these students must, or even should attain by the age of sixteen.

Some states, such as Michigan, are beginning to pass laws making mandatory the provision of services to youth in special categories. No longer can school easily avoid their responsibility to meet the needs of emotionally, mentally, and physically handicapped youth. However, schools in the broadest sense seem to be very reticent about really serving those young people who are causing them problems; behaviorally or academically, in the schools. Therefore, may disturbed, problematic, or otherwise difficult youngsters will not receive adequate services. This is true even with mandatory special education laws. What I am pointing to is that, on a governmental basis, we can neither purchase nor legislate educational opportunities and expect it to suffice.

A value climate must be created in local communities which says that we must do everything possible to insure that our youth have the social and academic skills necessary to survive successfuly in this school environment. This can be accomplished at the local level in several different ways. However, such programs must have the resources and the focus which will provide them a realistic opportunity to affect some changes. It is a fact that governmental institutions have the responsibility, more than anyone else, for preparing youth for roles in adult life. Some many argue that it is the family's responsibility to provide the moral character, or whatever we wish to term it, but it is the school and other governmental institutions which will provide the skills to provide access to employment and other means of sustenance in adult life. This seems to imply that programs must find a means to integrate the efforts of governmental institutions. If one were to accept the assumption that school change is the highest priority in combating delinquency, it behooves us to look at the national strategies in funding efforts in this behalf. There are funding efforts through ESEA and other Title programs not necessarily oriented toward delinquency, but having obvious effects, in a preventative sense. In terms of direct focus on delinquency prevention, the Office of Youth Development has given ten million dollars with which to bring about institutional change, coordination of services, and a variety of other things. This, compared to the total budget for education across the nation, might even have prompted David not to confront Goliath. I am not arguing that more money should be given, although there are obviously things that more money could do. What is implied is a greater unification and opportunity for communication between the Office of Youth Development and the Office of Education. Finally, in terms of national effort there is the Office of Criminal Justice. The problem here is that the energy in funding at the local level is going primarily into "after the fact" remediation and rehabilitation, not in prevention. Therefore, as is true with most of our social service systems, we are spending only a minimal amount toward the advocacy of prevention. Our whole stance, nationally, and this certainly filters down to the local programs, is based on a reactionary design, rather than an action plan aimed at prevention.

This brings us to a main point in the considerations. Who can be an advocate at the local level and what means are available to him? The lessons we have learned from OEO show us that the system will not tolerate nor fiscally support, for any long period, any part of itself which speaks to change the system, to disrupt political ties, or otherwise endanger the power balance of the system. Translated to the local level, we can speak to an example of a regional school district. The constituency for a regional district is the individual local districts. Strong advocacy efforts in local districts which raise the ire of the school boards and administrators will suddenly be caught in a crossfire between the local boards and regional boards. The regional district may agree that the situation in the local community is wrong. However, in terms of long-range objectives, the regional district often cannot afford to enter into direct conflict with the local constituent district. In simple summary, it is very difficult for a school employee to be involved in legal or strong consumer advocacy against his employer or power base. On the other hand, there are many types of change which can be brought about through infiltration and cooptation of the system. The school employee can advocate for programmatic change and more subtly change or shape the decision-making processes which bring that about. This may necessitate avoiding confrontation and opting for strategies which involve such cooptation or cooperation.

In Washtenaw County we have been successful in bringing about the creation of three local district supported reading programs, and two alternative school programs, by providing the fiscal and technical support necessary to get these programs off the ground. The implication here is that much can be accomplished with a minimal amount of money. However, that money which is used as an incentive or an inducement to change is very necessary. Schools may feel the need to initiate a program, but are often unwilling to take the initial fiscal risks in starting the program. As we have found out "small money" is often hard to come by. It seems to be easier to get a grant for $50,000 than it is to get one for $100 ranging up to $10,000. Our first year support for an alternative classroom in the Milan Public Schools cost us approximately $15,000. Our fiscal support in the Willow Run Reading Program was in the neighborhood of $2,000. Both of these programs are surviving today and making an excellent contribution to the school. They have helped a great number of youth survive in an environment which was otherwise not oriented toward their specific needs or academic deficiencies, which prohibited them from finding success in school. Therefore, one strategy for school change is to fund projects with regional school systems, whose normal role is the provision of technical assistance, and coordination of activity at the local level. Specifically, support monies could provide the personnel for the technical assistance along with money which could be used to purchase program supplies, reading programs, basic skills programs, and other needs for individualized instruction. A variety of academic opportunities can be injected into school systems which would begin to focus a greater proportion of school energy toward the needs of those youth who may eventually find their way into our juvenile courts. There is one inherent problem with this strategy. This is in terms of local maintenance. Its success seems contingent on an outside source of funds. The reason for this is that it's unlikely a local school district will provide the project with two or three thousand dollars, so that the project can, in turn, tell the local school district how to spend it. As long as the money is outside or perceived as "free money" the schools have an added incentive to cooperate. Once the external funding source dries up, particularly given the local inflation of costs in education, problems with budget cutting and other types of priorities, schools will tend to cut these programs first, or significantly reduce services in these areas.

This leads into another strategy that we'll entitle "legitimized experimentation." At a time when alternative education is suffering budgetary strangleholds, public and administrative indecision, and over-zealous belief by its supporters that it is the panacea, there is a need to examine what we mean by alternative education. Today, when people are increasingly concerned with the more basic and pragmatic offerings, an educational atmosphere that calls for new and different programs is certainly not as pressing as it was during the more explosive times that confronted all of us in the late 1960's. And so, there exists a need to go beyond alternative programs and begin to initiate more fundamental change. Basically, this means to develop and sustain a program of legitimized experimentation. In other words, there is a need to introduce a type of thought that says that each year a certain percentage of each school's budget would be devoted solely to the idea of creating, implementing, and evaluating a variety of different programs. This strategy requires us to obsolete certain assumptions. Among those is that "there is one best way." Many Americans believe in one perfect way to solve a problem. Educators are often the perfect example of this attitude; in tracking, in over-specific curriculum requirements, in unnecessarily stringent dress codes, etc. Too often we spend our time in search of, or in defense of, some panacea when time could be more productively spent in developing the idea of continuous readjustment and updating. Current research and philosophy state in rather clear terms that every person is unique, with his or her own potentials, goals, liabilities, and assets. The notion that there is a single solution for the complex issues of our day should, once and for all, be put to rest and replaced by a need to nourish the diversity and pluralism of modern life. It is imperative that our educational system encourage competition to show that there is more than one way to succeed.

Still another strategy for change in the schools involves legal advocacy. There are numerous situations in school districts across the country in which student rights are being violated. Legal advocacy is expensive and it is a tremendous risk to the family. For this is a confrontation strategy and may result in considerable hostility arising from the school, toward the youth and his family. We have experienced in our own project several incidences involving legal advocacy which have resulted in total alienation toward the family involved. In some instances this has even caused the family to leave the community because of residual feelings and animosity developed in this process. However, the process is essential. There are many students throughout our country who are indefinitely suspended without recourse (I also refer you to the "buffalo phenomenon"). Many of these situations could get more immediate response if the opportunity for legal advocacy were there. Rather than pursue costly court cases, many school systems would prefer to seek compromise resolutions. Therefore, projects must be provided with the opportuity for legal advocacy in the schools.

It may not be realistic to fund or provide this kind of opportunity within the organizational structure of school systems, but it should be provided in the community. It is not realistically available through current legal aid and other legal support services, as these programs tend to be understaffed and overloaded with clients. However, if special provision could be made in a legal aid society for an attorney to deal half-time, or exclusively, with school related cases it could be of considerable value. The important point is that the program must structurally allow and provide for at least a minimum of effort in this area.

A fourth strategy is in the area of community awareness. Many projects which have been funded nationally have not been given, nor intentionally included, resources designed to heighten community awareness of problems of delinquent youth. There has been inefficient use of media in getting information to the public about the large number of young people with serious academic deficiencies and social problems in the schools. There are many myths and his interpretations held by community persons as to the nature of these situations. Projects funded inside or outside the schools could be given media specialists or hire personnel with the experience in community organization. Money could be made available for the procurement and manufacture of a series of programs designed to heighten community awareness of the problems of pre-delinquent or alienated youth. This awareness could then be turned to pressure on school systems to initiate programs, upgrade basic skills courses, increase accountability and a variety of other changes which could conceivably be turned into more school resources for youth experiencing school failure.

A fifth area that should be valuable, would be a national conference on alternatives for alienated youth. Some of the White House Conferences, in the past, have stimulated thinking and some change. Through publications by the Office of Youth Development and HEW there has been a great deal of dissemination of information regarding other programs. At our Youth Services Bureau we often receive requests from other program persons for copies of our grants and information about some of the programs we have successfully run. However, if a special conference could be called which would involve practitioners from all over the country, social researchers, policy-makers, and other groups, much could be accomplished. The annual program meetings in many disciplines could be used as a realistic format. However, too often conferences end up being all social theory oriented with little practical application for people in the field. A national conference involving a large number of choices of workshops geared to alternatives in the school, program strategy, and various other aspects could be an invaluable and unifying force in the area of delinquency prevention, as it's related to the schools. Such an effort would require a large commitment of finances and time but I feel it would be well worth the investment.

In summary, I have suggested several distinct strategies for working with problematic youth. These are all strategies that local or regional school districts could employ. The first is institutional advocacy with projects in school systems, using their resources to stimulate the development of programs aimed at individualization for the needs of delinquent and pre-delinquent youth in the school system. The second, involves legitimized experimentation with a need to look at alternative education, particularly emphasizing *developmental needs rather than deviancy.* The third involves legal and client centered advocacy. This could effectively provide the immediate stimulus necessary to speed up the allocation of resources and energy in finding ways to involve youth and deliver services to them, rather than wait to let them slide between the cracks. The fourth strategy I described was related to community awareness. I feel it is quite important and often overlooked. The whole community should be aware of ways in which their schools are contributing to, or preventing, delinquency, and the kinds of academic and social problems youth are having in school. The community must develop a sense of concern which will resolve itself into pressure for resource allocation to meet these needs. Finally, I have spoken about my opinion that supports a relevant regional or national conference oriented to all of the above issues, with practitioners as the major participants and presenters.

My greatest concern in dealing with problematic youngsters in the schools is that we, as educators, do little to help these young persons. Positive efforts, even of they prove unsuccessful, are far better than no efforts at all. Any advocacy on behalf of these young people will help prevent them from being "buffaloed," sliding between the cracks, or being alienated from society in general.

CHANGES IN SPECIAL EDUCATION THROUGH LITIGATION AND LEGISLATION

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Special education is in the news. It is a topic which everyone seems to have heard something about recently. To the average person on the street, it is the awareness that this is the type of education for which there are no teachers, and with which the entire government is very concerned, as exemplified by Julie Nixon Eisenhower's appeal on television for persons to enter the field. For professionals, it is the knowledge of a right to education suit or the passage of mandatory special education legislation. For those who have confidence in the courts or believe in the legislative process, all is—or soon will be—well. In this short paper, some of the recent happenings in the field will be put in perspective. In addition, it is hoped, the reader will gain an understanding of the problems that remain in insuring an educational opportunity to handicapped individuals.

A right to education is not a new idea someone recently thought up. The founding fathers in many states placed in their constitutions the grandiose principle that education for *all* will be one of the state's paramount duties. A prime example is Wisconsin's Constitution, Article X, Section III, which states:

> The legislature shall provide by law for the establishment of district schools, which shall be as nearly uniform as practical and such schools shall be free and without charge for tuition to *all* children between the ages of four and twenty. (emphasis mine)

This statement had about the same meaning, however, as the statement "All men are created equal" by the framers of the Federal Constitution. To them "all men" meant white males. For the Wisconsin constitutional writers, and those in other states, "all children" meant those that looked like, acted like, walked like, and learned like, school officials thought children should.

It has not been just recently that parents have asked schools to fulfill constitutional duties. Several precedent-setting lawsuits, about the turn of

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NOTE: A copy of the mandatory special education legislation appears in the Appendix on page the century, exemplified the efforts made by parents of the handicapped to obtain an education for their children. These court actions met with little success for the parents. In 1919, a Wisconsin court in *State Ex. Rel. Beattie v. Board of Education* (172 N.W. 153) held that "the right of a child of school age to attend the public schools of this state cannot be insisted upon when its presence therein is harmful to the best interest of the school." This basically gave the school free rein to exclude the handicapped. In addition, other court suits established the precedent that the school board had the power to suspend or exclude a student if his admission would be detrimental to the best interests of the school, or to other pupils, and the determination of what is best for the school was left squarely up to the school officials (*State Ex. Rel. Dresser v. District Board* [1908]), 135 Wisconsin 619, 116 N.W. 232; *State Ex. Rel. Burpee v. Burton* (1878), 45 Wisconsin 150). These, along with other cases set the precedent for the exclusion of children from the public schools throughout the country. Several states developed legislation for mandatory special education services. A number of states have had such legislation for years. However, the legislation was interpreted to mean mandatory establishment of services, not a right to education for all handicapped children. Special classes were established, but when they were filled, children were placed on waiting lists for placement—oftentimes deprived entirely of an education until placement. This fact was borne out in *Doe v. Board of School Directors* (Civil No. 377-770 (Cir. Ct. Milwaukee County, 1970)). This suit was against the Milwaukee Board of School Directors, brought by John Doe (fictitious name) who was tested and found to be trainable mentally retarded. The school directors were required by policy to establish schools and/or classes to accommodate handicapped individuals, and some were established. However, all the established classes were filled, so the plaintiff was placed on a waiting list. The court, in a temporary injunction, ordered the defendants to accept the plaintiff in school, and educational services had to be provided for those children who were on waiting lists.

The Basis for Rights to Education

Right to education cases are based primarily on the Fourteenth Amendment to the Constitution of the United States—and specifically on the due process and equal protection clauses of this Amendment. There is a substantial and a procedural type of due process. The substantial due process requires that an action by a government (meaning, in these cases, a school board) must be reasonable in purpose, method and impact. Procedural due process requires that the school system proceed in a fair manner. This would require a hearing or presentation of evidence, a cross examination, etc. The equal protection clause prohibits a government or, in this case, the school system from unfairly discriminating against an individual. The arguments based on equal protection made by plaintiffs in right to education cases say that if you provide education for one child, you must provide education for all.

Precedent Cases

The first major court action with significance for handicapped children was *Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania* (34 F. Supp. 1257 [E. D. Pa. 1971]). This class action suit, on behalf of 14 named retarded children, was brought against the Commonwealth of Pennsylvania, the Secretary of the Department of Education, the State Board of Education, the Secretary of the Department of Public Welfare, and certain of the school districts, plus the officers in those school systems. The initial complaint was filed January 7, 1971. A stipulation, which was approved and ordered by the court on June 18, 1971, said that no mentally retarded child shall be denied admission to a public school without being accorded a notice and the opportunity for a hearing. This was based on the due process clause of the Fourteenth Amendment. On October 7, 1971, the parties agreed, and the court put into effect, an even stronger order which said that under the Fourteenth Amendment's equal protection clause, no mentally retarded child could be denied a free public school education and training in Pennsylvania. Thus, *P.A.R.C.* obtained a free public education for the handicapped in Pennsylvania. New state rules and regulations subsequently have been written as a result of this case. There are, however, some drawbacks to this decision. First, the plaintiffs, as a class, were only the mentally retarded. There was and probably continues to be a debate as to whether this case really affected all handicapped children in Pennsylvania, or just the mentally retarded. Secondly, the issue of money was not mentioned in any of the agreements. What would happen if Pennsylvania suddenly said, "Yes, we'd like to do all these things, but we just don't have the money right now?"

This exact issue led to probably the best right to education opinion handed down by a court. This happened in Washington, D.C., in *Mills v. the Board of Education of the District of Columbia* (Civil Action No. 1939-71 (D.D.C. 1972)). This decision was rendered by a Federal judge, so it has more power as a precedent than the agreement in *P.A.R.C.* The plaintiffs in the *Mills* case were also denied an education because of alleged mental or behavioral, physical or emotional handicaps or deficiencies. In the defendants' answer to the complaint, they agreed that there was a class of students who were denied an education, but the reason for this was that there were no financial resources to provide the special education program. Judge Joseph C. Waddy, on August 1, 1972, held that the defendants could not exclude handicapped children and must provide special programs for them. He also said that the failure to do this could not be based on the claim of insufficient funds. He said that handicapped children ought not to bear more of the financial burden than other children.

These two cases have led to a groundswell of similar cases throughout the country. In more than half the states, some form of legal action has been filed to try and obtain services for the handicapped within the state. In addition, mandatory special education legislation has recently been enacted, or is presently being developed in almost every state. In those states where the legislation is not or has not been enforced, efforts are being made to do so through court actions.

So why any apprehension? We have precedent-setting cases, which hold precedent for a right to an education. We have legislatures enacting legislation to insure an education for all handicapped. Substantial progress has been and is being made, but the picture is really not all bright. About a year ago, on March 21, 1973, the United States Supreme Court, in *San Antonio Independent School District v. Rodriguez* (93 S. Ct. 1278), made a decision in a school finance suit which, indeed, muddied the waters of all right to education suits presently in the courts, as well as those which may be filed in the future. The *Rodriguez* case involved the financing of schools in Texas, and the constitutionality of spending a varied amount of money between districts. This practice was sanctioned and promulgated by the taxing system of the state. One of the contentions of the plaintiffs was that education is a fundamental interest. Justice Powell, who wrote the majority opinion, conceded that education played "a vital role in society," but "education is not among the rights afforded explicit protection under the Federal Constitution"; education is not "explicitly or implicitly guaranteed by the Constitution." These statements were immediately used by the defendants in a right to education case entitled *Colorado Association for Retarded Children v. State of Colorado* (Civil No. C-4620 (D. Colo., filed December 22, 1972)), as the basis for a motion to dismiss. It was their contention that, because of *Rodriguez,* the action should be dismissed. However, the judge felt that the *Rodriguez* decision was significantly different from the issues in *Colorado*, because some of the plaintiffs in *Colorado* were totally excluded from school, and this was not true in *Rodriguez*. Although the *Rodriguez* decision by the Supreme Court is not, or probably will not be, reason enough to dismiss most right to education cases, it probably will significantly limit them. Court actions based on the Fourteenth Amendment to the Constitution of the United States will probably only entitle the plaintiffs—handicapped children—to an opportunity to enter the public schools or receive some educational service financially commensurate with those given to non-handicapped children. However, this would be totally inadequate, as handicapped children do not need equal education, but unequal education. It costs more to educate handicapped children than regular children. Comparatively more money is needed to educate the handicapped.

How Far Will the Courts Go?

Judge Waddy in *Mills* said that handicapped children should not have to bear more of the financial burden than non-handicapped children. The Supreme Court in *Rodriguez* allowed unequal amounts of money to be spent on education by various districts. What these decisions mean is that, at least, courts will probably only compel a district to spend as much money per handicapped child within that district as is spent for each non-handicapped child. Courts are ordering the schools not to exclude handicapped children by telling the schools that all children have a right to an education. However, the determination of what that education is to be is pretty much being left up to the educators.

Although this may lead one to suspect that if some kind of service is provided to the district's handicapped children, then that's all that is needed, a more recent decision by the Supreme Court in *Lau v. Nichols* gives us an idea of about how far the courts will go.

This case involved nearly 3,500 students in San Francisco who are native speakers of Chinese, and whose facility in English is not great enough to allow them to succeed in school without the aid of special instruction in the English language. Only about 1,700 of these Chinese students were actually receiving the special instruction in English. It was argued that the failure to provide this instruction to all students who needed it violated the equal protection clause of the Fourteenth Amendment to the Constitution of the United States, as well as the Civil Rights Act, Section 601.

The California District Court held that the school system had no duty to correct this situation, and 9th U.S. Circuit Court of Appeals affirmed this position. The Supreme Court of the United States, however, reversed the decision in favor of the plaintiffs. Justice Douglas, in writing the opinion, based the decision primarily on the Civil Rights Act, rather than on the Federal Constitution—specifically the Fourteenth Amendment. The Supreme Court did not outline a specific remedy, but decided only that the school system was not justified in taking the position that it did not have a responsibility to provide the necessary special instruction. The ruling said merely that the school system must use its own expertise to rectify the problem.

The important point here, of course, is that, even though the plaintiffs were in school, the court ordered instruction to be provided which would supply these children with the necessary skills in English.

In the future, it is very important that good mandatory legislation be written into law in every state which requires school districts to operate programs for the handicapped children. Court actions can then be used, if necessary, to see to it that these programs are being implemented, and that adequate money is being allocated to comply with the law. There are, however some problems associated with the development and implementation of mandatory education laws.

Judith Greenbaum, in her paper "Mandatory Legislation: Michigan's New Law, How it Actually Works," also presented in this volume, discusses in depth the law covering special education in Michigan.

MANDATORY LEGISLATION: MICHIGAN'S NEW LAW, HOW IT ACTUALLY WORKS

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When Public Act 198 known as "Mandatory" was passed in 1971, the state of Michigan joined the majority of the fifty states in the United States in guaranteeing the right to an education for all its children. The passage of a mandatory education act was necessary because an estimated 100,000 children in the state of Michigan were being denied a public education solely on the grounds that they were handicapped. Mandatory supposedly insures that each and every handicapped ("impaired") child in the state, age 0 to 25, will be provided educational programs and services in order to reach their maximum potential. Other unique features of Mandatory and the Special Education Code containing the rules and regulations governing Mandatory are: the involvement of parents and older children in educational planning and decision making, the definition of a new category of handicapped: "Learning Disabilities," the reflection of Educable Mentally Retarded from IQ 80 to 55 to IQ 70 to 55[1] (thus placing a large percentage of children back into the "regular" classroom) and the stated intent that handicapped children be integrated with their "normal" peers whenever feasible.

The law and code have been in effect only since the fall of 1973. Much of the code needs to be interpreted and modified before it can intelligently used by local school districts to serve handicapped children. Many school districts have hardly begun thinking about their responsibilities under the law, others are too confused by varying interpretations and rumors to respond at all.

Politics and Publicity

One of the first questions a school administrator will ask is "Is there enough money?" If you ask the state legislature, they will tell you that the $73 million appropriated for special education this year represents

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[1] Mentally Impaired Children are now defined in standard deviation terms rather than IQ. Thus "Educable Mentally Impaired" is defined as "developing at a rate approximately 2 to 3 standard deviations below the mean" which approximately translates into IQ 55–70.

"full funding." But this is only a 10% to 15% increase over last year (after the normal wage and cost-of-living increases) and with an expected influx of 50,000 additional children this first year (an increase of 30% to 40%) it will not be nearly enough.

Although one of the intents of Mandatory was to serve children ("persons") to age 25 this will not be the case in practice. The code states that a person is eligible for services through age 25 only if he has not graduated from high school or completed a "normal course of study."[2] A "normal course of study" can be defined as a special education program leading to a diploma.[3] Local school districts have been giving children diplomas at age 18, thus discharging their obligations under the law.

Since the public believes, because of what it reads and hears in the media, that all handicapped children age 0 to 25 are now being served and that adequate state funding is available, it has become very complacent. "Handicapped children are being taken care of, let's move on to something else," stated a Trustee of the Ann Arbor School Board after a presentation asking for supportive services for those handicapped children (and their teachers) who are integrated into regular classrooms.

Rules and Ramifications

One of the most controversial portions of the new code deals with the integration of handicapped children and children formerly labeled handicapped into the regular classroom. Parents, teachers, and administrators alike are gravely concerned about the problem. First of all a large percentage of children, those with IQ's between 70 and 85, are no longer labeled retarded and will be ineligible for special education services (unless they are relabeled "Learning Disabled" or "Emotionally Impaired"). These children will be in regular classrooms. Secondly, some children who are mildly "Impaired" will be integrated into regular classrooms at least part of the school day. However, these children will be eligible for supportive services because they carry a label. Teachers in regular classrooms will need in-service training and possibly the aid of a teacher consultant, curriculum consultant or helping teacher in order to cope with the situation. Integration with their normal peers can be the start of a whole new life for these mildly involved children if it is well planned, staffed, and funded. Even transportation may be a problem, since the state will reimburse for transportation only if the child is going to a special program. The child in a wheelchair may have no way to get to his integrated junior high school program without the local school district paying for his transportation by specially equipped bus.

The Special Education Code lists various rights the parents of a handicapped child have:

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[2] R 340.1721 Eligibility, Rule 21, Special Education Code.

[3] R 340.1701 Definitions, Rule 5, Special Education Code.

The right to participate in the Educational Planning and Placement Committee (EPPC).
The right to disagree with the placement and ask for a hearing.
The right to see the child's record and to bring along an advocate or friend to any proceeding.
The right to be informed of any groups or organizations which might assist the family.

Often parents are not informed of these rights by their school system. In fact, an excellent brochure recently published by the Michigan Association of Retarded Children for parents of handicapped children was considered "too inflammatory" by the Washtenaw Intermediate School District to distribute to the parents of children it serves.[4]

Attitudes and Values

Let us assume that parents, teachers, and administrators all want to do what is best for the handicapped children in their charge. There are many additional attitudes and values on the part of each member of the EPPC team that may hinder joint effort. The parents are often in awe of school personnel, self-conscious, sometimes distraught, often believing that the professionals are not only judging them but have already made up their minds about the placement of the parents' child. According to Barsch in his book *The Parent of the Handicapped Child* "It is automatically assumed by school people that a good deal of the foundations for learning what the school has to offer have already been laid by the parents during the period from infancy to school age. The parent who has failed to match up to the expectations of school or clinic personnel may readily be classified as over protective, oversolicitous, rejecting, disinterested, apathetic, guilt-ridden, etc. The labels simply serve as terms of value judgment by a segment of society that for one reason or another indicts the parents for having failed to discharge their obligations." "If the parent is militantly aggressive in seeking to obtain therapeutic services for the child he may be accused of not realistically accepting his child's limitations. If he does not concern himself with efforts to improve or obtain services he may be accused of apathetic rejection of his child." What kind of communication and joint planning can take place under these circumstances? And remember, the parent's concern is with just one child, the professional's with many.[5] Do we really want a parent to share in the educational programming of her child?

Regarding the pamphlet the Washtenaw Intermediate School District thought was too inflammatory, do these Directors of Special Education really want parents to know their rights under Mandatory at all?

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[4] "Your Handicapped Child's Right to Education," MARC, 510 Michigan National Tower, Lansing, MI 48933.

[5] W. Waller, *The Sociology of Teaching*. New York: Wiley, 1967.

In the March 26, 1974 edition of the Ann Arbor News, a very small article appeared on page one, headlined: "Special Class Enrollment Dips." It went on to state that although an enrollment of 200,000 children in special education programs was expected this year due to Mandatory legislation, in actuality, the enrollment dropped from 150,000 to 140,000.

Are we really serving less children than ever before?

What actually happened to Public Act 198, that promised so much?

ALTERNATIVE PLACEMENTS

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As I begin to address this topic I would like to change or refer to the topic as "Optional Placements for Educational Opportunities." In doing this, it is hoped that this topic title will now serve to incompass all Educational Placements, regardless of the present accepted titles, such as: Open Classroom, Transitional, Conventional, Street School or Academy, Dropout Programs, Basic and Continuing Education, Basic Skills Emphasis Programs, Free School Concept, Talented Schools, Innovative Traditional, Non-Specific Achiever, Occupationally Oriented Programs, Potential Dropout, and Special Need Programs. I am sure that there are additional titles for program philosophies, but we must draw a line somewhere.

For sometime educators, counselors and administrators have been placing students in programs because of his or her anti-social and/or classroom behavior patterns, without evaluating the program to be utilized for the placement; and on the same hand, some educators have just pushed out or helped students push themselves out without any kind of optional placement for educational attainment. Today educators throughout the United States are beginning to develop, organize and operate Optional Placements for educational opportunities for their student clientele.

We as educators are being questioned by parents, the community and society as a whole on what are we or what can we begin to do to prepare the students who complete or do not complete the requirements of our educational institutions, to function successfully in our changing society. Educators were basically held responsible for the report published by the Select Committee on Equal Educational Opportunity—United States Senate, titled "The Effects of Dropping Out"—subtitle, "The Cost to the Nation of Inadequate Education" by Henry M. Levin. Mr. Levin states, ". . . an inadequate education for a substantial portion of the population not only handicaps those persons who are undereducated, but also burdens society with reduced national income and government revenues as well as increased cost of crime and welfare.

Using data from the U.S. Department of Commerce and other sources in conjunction with extensive research literature from the social sciences, this report obtained the following findings:

1. The failure to attain a minimum of high school completion among the population of males 25–34 years of age in 1969 was estimated to cost the Nation:
   $237 billion in income over the lifetime of these men; and $71 billion in foregone government revenues of which about $47 billion would have been added to the Federal Treasury and $24 billion to the coffers of state and local governments.
2. In contrast, the probable costs of having provided a minimum of high school completion for this group of men was estimated to be about $40 billion.
   Thus, the sacrifice in national income from inadequate education among 25–34 year old males was about $200 billion greater than the investment required to alleviate this condition.
   Each dollar of social investment for this purpose would have generated about $6 of national income over the lifetime of this group of men.
   The government revenues generated by this investment would have exceeded government expenditures by over $30 billion.
3. Welfare expenditures attributable to inadequate education are estimated to be about $3 billion each year and are probably increasing over time.
4. The costs to the nation of crime that is related to inadequate education appears to be about $3 billion a year and rising.

Today, students are bringing with them new needs that cannot for the most part be met or even addressed by our educational institutions as they exist today. There was a time when educators were charged with the responsibility of motivating only the cognative domain, but today we are charged with the cognative, affective and psychomotive domains, which is good for our egos, but we, for the most part, are still utilizing the same old Benjamin Franklin, 1820 system for educating the young.

I would contentd that we as educators must give up our flag of honor and asks our fellow human service institutions or agencies for help; i.e. social services, law enforcement agencies, community service centers. We must begin to service the total needs of the student and begin to intervene where he is at in terms of his functioning, capabilities and aspirations.

We must begin to research and collect data which will assist us in finding some reliable and valid programs that will begin to serve a greater number of students who enter our institutions, but somehow fail to complete or shall I say, fail to attain an adequate ability to either function or survive in our changing society, which has a built-in program for failure for those with anti-social behaviors.

Michigan is one of the leading states in the nation which is doing something about combating the dropout problem and student problems in general, by providing alternative placements throughout the state. In 1968, the issue of the high dropout rate in Michigan was called to the attention of Governor Milliken. In his Educational Reform Package of 1969, he proposed to the legislature to establish and allocate to the Neighborhood Education Authority, $100,000 to investigate the possibility of developing, organizing and operating educational programs that would assist those young people who were unable to complete their high school education with the formal traditional means. In 1971, after much research and data collected, the Neighborhood Education Authority opened its pilot program, the Neighborhood Education Center in Pontiac, Michigan. The Center was geared towards serving the needs of the students of that particular area. After being in operation for three years now, and having served over 500 students, the program has been declared a tremendous success. This was due not only to the efforts of the staff and students, but parents, the community, and the excellent working relationship with the local school district. Last year the Neighborhood Education Authority presented to the State Board of Education evidence of the growing need for opening additional Neighborhood Education Centers throughout the State of Michigan. Due to the accepted proposal and open-mindedness of the State Board of Education, the Neighborhood Education Authority was granted $500,000 and has now opened seven programs throughout the State of Michigan. Each program is designed to serve the needs of the students in that particular area.

In conclusion, the Neighborhood Education Centers are but one of the available means for aiding those students who, for whatever reason, were not able to function within the formal traditional means. With research, collected data, innovative ideas for today's student and the added use of human service agencies, we will begin to conquer the problem of helping our youth in this changing society.

DUE PROCESS IN SCHOOL DISCIPLINARY PROCEEDINGS

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For those here today sufficiently interested in school law, you may be appreciative of the fact that we were dealt an unkind blow by the U.S. Supreme Court in the case of *Rodriguiz v. San Antonio Schools*. Most people interested in the furtherance of equal educational opportunity—and I believe that includes most, if not all, student advocates—were disappointed in that decision because it specifically excluded education as a constitutionaly protected right. In my case, however, within the context of writing this document, I didn't have far to look for a definitive decision. In *Milliken v. Green*, the case that brought us our current state financial aid to schools legislation, the Michigan Supreme Court had said, "The right to an education in Michigan is a specifically enumerated constitutional mandate." Public education was, the Court said, ". . . a fundamental interest."

That statement appeared to be strong enough in both intent and language to establish education as the sort of fundamental right that could not be taken away, even with the authority of Section 613 of the *School Code*, before first providing the student procedural due process. However, as mentioned earlier, since the time the State Board of Education adopted its guidelines in November of 1973, the Michigan Supreme Court has vacated its earlier decision, which is to say that decision for all intents and purposes no longer exists, and can, hence, not be used as justification for anything. Thus, the guidelines merely say that "public education, rather than being a privilege, is an important right."

Let's go back a step or two. As you may know, Section 613 of the *Michigan School Code* authorizes local school boards to suspend or expel "from school . . . a pupil guilty of gross misdemeanor or persistent disobedience . . ." At the same time the *School Code* also requires parents to send their children, age 6–16 to school. The law provides penalties for those parents who do not. The law does not, however, provide penalties to school officials or boards of education who either refuse to accept those children when presented at school or who suspend or expel students under the age

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NOTE: The U.S. Supreme Court will hear during the Fall term 1974 two cases involving student suspensions.

of 16. I am reminded of the case of two junior high school boys, brothers, who were suspended indefinitely from their school for refusing to tuck in their shirts, thus violating the school's rules regarding dress and grooming. The boys' mother was not disposed to enforce the school's rule. The consequence was that litigation was initiated by the school board that (1) charged the mother with violating the compulsory school attendance laws and (2) begged that the boys be taken from the mother and be made wards of the court by reason of the mother's obvious parental negligence. The case was resolved by the mother's moving, with her sons, to a school district more concerned with academic, rather than sartorial, education. The point of this is, of course, that's what sauce for the goose is, indeed, sauce for the gander. It seems to me that if the law requires parents to send their children to school, there logically must be some corresponding law that provides penalties to school officials who refuse to accept them, without having provided those children or those parents some measure of procedural due process.

We say there that "students who are in danger of being either suspended or expelled have shown an increasing desire, as suppotred by many courts, in being provided procedural due process; and while neither the *School Code* nor the State Board of Education has defined procedural due process for purposes of suspension and expulsion, there are, however, a number of component elements that both speak to and embody the concept of procedural due process." The procedures suggested for consideration are:

1. The timely and specific notice of charges against the student.
2. The student's right to question each member of the professional and school staff involved in or witness to the incident.
3. The student's right to present evidence in his or her behalf.
4. The student's right to an impartial hearing.
5. The student's right to confront and to cross examine adverse witnesses and to present witnesses in his or her behalf.
6. The student's right to be represented by qualified counsel at the hearing.
7. The student's right to a record of the hearing.
8. The student's right to appeal an unfavorable decision by the hearing panel to a higher authority.

The elements noted above are the embodiment of a concept. However, there is obviously a great deal of substantive difference between a one-day suspension for being mildly insubordinate and an extensive suspension for persistent, recurrent disobedience. A student in danger of being suspended indefinitely—in other words, being deprived of his right to a public education—might well expect to receive all or most of the elements listed above prior to such action.[1] Indeed, one case[2] tried in U.S. District Court ordered a Michigan school district to give an expelled student a hearing in accordance with the guidelines laid down in an earlier Federal case.[3] Those guidelines, the Court noted, included "notice containing a statement of the specific charges and grounds which, if proven, would justify expulsion under the regulations of the Board of Education; a hearing affording 'an opportunity to hear both sides in considerable detail' preserving the rudiments of an adversary proceeding; names of witnesses against the student; and, the opportunity to present to the Board his own defense."[4] A student being suspended for a short period of time, on the other hand, might receive adequate procedural due process by a conversation with the principal. Such a conversation would confront the student with the alleged rule violation and offer the student an opportunity to deny or rebut whatever evidence is offered against him.

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[1] *Vail* v. *Board of Education of Portsmouth School District*, 354 F Supp 592 (D NH, 1973).

[2] *Vought* v. *Van Buren Public Schools*, 303 F Supp 1388 (ED Mich, 1969).

It seems important to emphasize the flexibility of the concept of procedural due process. As one court has stated, "the hearing procedure required, will vary depending upon the circumstances of the particular case."[5] Another Federal District Court in Michigan declared that the principles of due process "are very flexible and *the degree of rigidity depends upon the gravity of the penalty* which may be imposed"[6] (emphasis supplied). As one Federal District Court noted, it is clear that it [procedural due process] need follow no particular ritual . . ."[7]

It would propably be best for local school officials to classify suspensions and resulting due process requirements in a uniform, districtwide fashion. For example:

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[3] *Dixon* v. *Alabama State Board of Education*, 294 F2d150,158 (CA 5), cert den 368 US 930, 32 SCt 368, 7 LEd 2d 193 (1961)

[4] *Vought* v. *Van Buren Public Schools*, 303 F Supp, at 1393

[5] *Davis* v. *Ann Arbor Public Schools*.

[6] *Godsy* v.*Roseville Public Schools*, US District Court, Eastern District, Michigan, Case #34988.

[7] *Davis* v. *Ann Arbor Public Schools*, 313 F Supp, at 1227.

Length of Suspension	*Who Suspends*	*Procedural Due Process Requirements*
1–5 school days	Principal upon delegation of authority of board of education	a. informal meeting with principal prior to suspension b. student presented with charges, evidence and witnesses, if any against him c. student given opportunity to deny charges, rebut evidence and question accusers and witnesses d. unfavorable decision may be appealed to superintendent or his designee
6–10 school days	Superintendent upon recommendation of principal and with delegated authority of board of education	a. informal hearing with superintendent or a person designated by the local school board b. student presented with charges, evidence and witnesses, if any, against him c. student given opportunity to deny charges, rebut evidence and question accusers and witnesses d. student entitled to present own witnesses or to be represented by an attorney e. unfavorable decision may be appealed to local board of education
More than 10 school days	Board of Education upon recommendation of superintendent	same as expulsion

Note that the above is intended *only* as a guide to local school districts, an illustration of a system that might be utilized.

The right to an education is a very basic right. At the same time students may be suspended or expelled for various reasons. However, this action should be used judiciously and at the same time school districts are encouraged to establish and develop alternative means for receiving an education.

Apparently some Michigan school districts have already become aware of and sensitive to these impending difficulties as reflected by the establishment of public alternative schools. Still other districts have expressed in their codes of student conduct the intent or desire to provide such altenative education to students who are suspended and expelled. The State Board of Education supports this concept.

Well, so much for the guidelines.* As I said earlier, I hope they help.

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* A copy of the guidelines referred to appear in the Appendix at page with an introduction by Mr. Lowman.

If they are read and adopted in their intent by local districts, I have hope that the case of the six-year-old Indian boy permanently expelled from his public school for being "too immature" will not be repeated. I have hope that the case of the boy who wrongly kicked his principal's car, was suspended by the principal, criminally charged by the principal, forced to make financial restitution by the principal, forced to seek psychiatric aid by the principal and recommended for permanent expulsion by the principal will not be re-enacted within this state. Those cases, incidentally, both occurred in Michigan within the past two years.

Given the political realities of education in Michigan in 1974, I believe such an advocacy role for the Michigan State Department of Education and its staff is not feasible. I believe that the mere existence of the guidelines, written largely from a factual, non-advocate point of view will do as much or more for the furtherance of students' rights as anything before done in the state. At least I hope that is so.

THE CASE FOR DUE PROCESS

JUNIOUS WILLIAMS

Mr. Williams, former director of the Sagniaw Student Rights Center, is a law student and is pursuing a graduate program in education, both at The University of Michigan.

Many school administrators and boards of education view legally imposed standards of due process for students as an unwarranted judicial interference with educational operations. A general feeling exists among some educators that stringent legal standards in the area are both burdensome and unnecessary since school people operate according to what is in the "best interest" of the child and the community.

While I agree that school people *do* have a genuine interest in the child and community, I must disagree with the assertion that the presence of interested people negates the need for stringent due process standards. It is critically important for educators to both recognize and support stringent, workable schemes of due process for students.

The due process clause of the Fourteenth Amendment to the U.S. Constitution embraces the concept of due process as one of the most fundamental rights of the people. It is a broad and sweeping statement of a national commitment to the idea of governmental fairness and justice in dealings with people. "Due process is a cornerstone of our constitutional government." As such, it demands utilization in all phases of governmental action.

Recognizing the importance of due process as a cornerstone of our system of constitutional government, it is necessary for the government to function within the protective limits of due process. And since schools are government for the purpose of fulfilling the requisite "state action" necessary to invoke due process standards, it is not, in any way, an unwarranted judicial interference for judges to demand that schools afford students adequate procedural due process any time the school's anticipated action will affect a student's right to enjoy the benefits of public education.

But beyond the legal rationale, there is an educational and a societal need demanding that schools afford adequate due process to students. Government supposedly exists for the protection, and in the best interest of, the people. Because our system has provided for mechanisms to change the structue of government whenever the people so desire, it is incumbent upon government to make the system workable. It is indeed dangerous, in fact fatal, for government to chart a course that causes young people to seriously dcubt and even deny the ability of their system of justice to protect the people.

The manner in which many schools operate in dealing with students is just such a course. We have seen the ultimate of that disaffection in the racial rebellion of the mid-sixties, in the campus disturbances of the late sixties, and now in the political kidnappings and truckers' strike of the last year. All are signals that people are dissatisfied with the ability of the system to deal fairly with their problems.

Educators can play a vitally important role in demonstrating the potential effectiveness of the system by operating schools democratically with ultimate adherence to constitutional principles. The time required and money expended in assuring students a full due process hearing is a small price to pay for the potential benefits. The medium is the message and the message to students will be that "privileges and rights can be withdrawn for violations of rules, but only after a student has been afforded the full opportunity to be heard in accordance with a sound due process procedure."

It is incumbent upon the educational leadership not only to develop judicially acceptable due process procedures but also to implement extensive in-service training programs for faculty *and* students. The time and energy expended in such an effort is in no way violative of or inconsistent with the educational objectives of our schools, especially those relating to preparing young people for informed and intelligent participation in democratic institutions.

The school represents the first "governmental" contact for most of the young people in this country. It is sound legal, educational and societal policy to demand that public educational institutions make every effort to provide students with a truly representative exposure to American constitutional government. Judge Goldberg of the Fifth Circuit United States Court of Appeals aptly characterized this policy in the majority opinion in *Shanley v. Northeast Independent School District* (460 F. 2d 960, 1972) when he wrote:

> Perhaps it would be well if those entrusted to administer the teaching of American history and government to our students began their efforts by practicing the document on which that history and government are based. (978)

THE FACTFINDING PROCESS IN SCHOOL DISCIPLINE PROBLEMS

RITA SCOTT

Ms. Scott is Educational Director of the Michigan Civil Rights Commission.

Let me begin my brief presentation with an explanation of how the Michigan Department of Civil Rights and the appointed eight member Commission became envolved in the problems of school discipline. We maintain a Detroit office and are listed in the local phone directory under State of Michigan. There is no State Department of Education office in the city. As a department of state government we are charged through the Constitution with the responsibility to protect and secure civil rights and to eliminate or prevent illegal discrimination on the basis of religion, race, color, creed, national origin and ancestry. In more recent legislation prohibitions against discrimination on the basis of sex and age in employment were added and in 1972 protection against discrimination on the basis of sex in places of public accommodations was legislated in Michigan.

Early in our department's history, we were consulted by students or parents who were victims of policies, which limited their freedom and sometimes denied them access to schools. Many of the policies were not repressive on constitutional grounds but some were questionable. A few districts penalized Jewish students who choose to observe their religious holy days . . . rules would not allow this to be an excused absence or tests would be scheduled without considering the academic-cultural conflict imposed upon the student.

School districts traditionally penalized economically disadvantaged students through the assessment of fees for books, supplies and sundry other items. One group of students from an affluent suburban district requested assistance because their plans to join the nationally organized peaceful demonstration protesting the Viet Nam War was being thwarted by a school principal who ordered teachers to schedule class quizes. The Department of Civil Rights could offer no direct assistance in these instances and referred citizens to the State Department of Education.

Minority students and parents also brought their complaints to the department, citing unequal treatment and biased judgement as the cause for their separation from the educational setting.

Many of these problems have been resolved through private negotiations, law suits and local school district policy changes. Students who persue their grievances have sought out every available resource—the State Department of Education, the State Superintendent, the Board, the legislature, the ACLU, neighborhood legal assistance offices established under the Michigan OEO program, and the courts. These public or private agencies have been and will continue to be called upon to intervene and to assess the appropriateness of local school district policies and practices. It is not a situation which we relish but a responsibility which we accept. There are actions which educational institutions may initiate that will reduce the need for external review and judgement.

More often than not, it is the immediate response of school agents to conflict situations that establishes the climate of acceptance in a building and a district towards rules, discipline and authority.

Discipline is a complex process and can pose serious problems for school officials and for students. When one understands and acknowledges some of these complexities, the need for a tempered response is also recognized. I offer this recommendation—that the school person in charge should proceed to analyze all discipline situations and to establish culpability in a fashion that demonstrates respect for the rights of all parties, seeks out all available facts, and recognizes differences in individual life styles, values and perceptions.

Operating from this position does not necessarily guarantee peace and tranquility, nor does it imply that the response will be always affirmed through review or appeal. It may, however, reduce the volume of challenges to the decisions which are rendered by school officials.

There are three major categories of stress situations that officials are called upon to judge. They are 1) teacher-student encounters, 2) student-student encounters, and 3) group encounters. In each instance some fact finding is required to protect the staf, students and the decision maker.

Once presented with a controversial situation, the following approach is recommended:

- —Determine what happened, solicit all available information and develop a statement of facts.
- —Obtain background information to determine the origins of the dispute.
- —Get a fix on the setting of the event(s), assessing personal, institutional and extra-institutional factors and influences.
- —Determine the consequences of the event(s) in terms of the parties envolved, the individual school and/or the district.
- —Examine the potential for repetition.
- —Then make a judgement.

The most casual report entered into the student's accumulative records file should be permitted to stand only when its accuracy is verified. Too often, these reports, never discussed with the student and never agendized in a parent-teacher conference may become the substantive issues in a "persistant disobedience" hearing and may lead to involuntary transfer or expulsion.

Teachers would be well advised to separate behaviors which lead to poor or marginal citizenship grades on a report card from behaviors which are indicative of more gross adjustment problems.

Under a "fair discipline" policy all students, caught or charged, should have an opportunity to interpret and defend his/her behavior. If rules of conduct are clearly defined and publicized, young people in the "caught" situation generally understand that they broke a rule and that witnesses and evidence speak to the specifics of the circumstances. Such scenes are often distressing to students, parents and school staff, but they may become the basis for facilitating behavioral modification.

Students of all ages should understand the rules, the reasons for rules and the consequences of rule infraction.

The "charged" student situation sometimes presents a more complex problem for school disciplinarians. When the rule violated has never been enunciated, the controversy may be a matter of subjective judgement and/or personal interpretation.

When a charge against a student is issued that may result in a separation from a class or school, a thorough, objective factfinding is absolutely required. It is wise to assume that the evidence will be subject to review by an impartial independent party.

The student-student conflict situation is often a "no-win" episode. Verbal and/or physical aggression is not generally acted out in full view of school staff or before a witness willing to testify. The six-step approach is particularly appropriate under these circumstances. Where personal injury has occurred and liability must be established the investigation must be meticulously persued.

The student-staff encounter is equally difficult to adjudicate. Take a situation as follows: "Gerald disrupted the entire class during 6th hour family life period. I recommend that he be excluded from this class for three days until the student and his parents sign a behavioral standards agreement."

Gerald is sitting in the office and the counselor/principal must interpret the situation. The staff note really does not help the next school official deal with the situation Gerald allegedly precipitated. Administrators must insist that all staff referrals be based upon a description of behavior and events and that reports identify the source of the information.

Group conflict situations present the greatest challenge to the institution's disciplinarian. When large numbers of students are involved in aggresive behavior the first responsibility of administration is to restore order. The use of police is often necessary and appropriate.

When order has been restored in the building and on campus, it is not unusual for staff and students to experience feelings of tension and/or fear. Those persons on the periphery of violence want to know what happened, was anyone injured, why did it occur, will there be a reoccurrence and who was responsible.

Immediately following the disruption some time should be used for general discussion. This may serve to reduce tension and anxiety. Following this one to two hour cooling off period, the administration should have a fact finding plan to put in operation. This should include written and signed eye witness accounts by school staff, students and police if called. Persons identified as participants in the disorder must be allowed an opportunity to hear the charges, to defend her/himself and to provide a written account of events. Persons offering testimony should be counseled regarding the importance of accuracy. Depending upon the complexity of the overall situation the use of central administrative personnel may facilitate the fact finding process.

The use of a neutral third party, for example the director of guidance and counseling, is recommended in the review of all written and verbal testimony. It is only after the careful assessment of all facts that charges against individuals should be issued. At that point a hearing, meeting due process guarantees, should be conducted in timely fashion.

A summary of the basic findings of such an investigation including a chronology of events should be prepared by the administration and shared with interested parties and the media. This official report may serve to counter rumors surrounding the conflict statement.

School officials exercise great authority under Michigan law. In the service of use and basic to the healthy development of future adults the examples we set are critical.

PROBLEMS OF EVIDENCE AT STUDENT DISCIPLINARY PROCEEDINGS

Roger Tilles

Mr. Tilles is an attorney in Swartz Creek, Michigan and Chairman of the Michigan chapter of the National Organization for Legal Problems in Education.

At first glance, the area embodied within the title of this talk would seem to be very narrow. There are such broad problems involving due process in student disciplinary proceedings that analysis of one specific area would seem to be a specious exercise. After extensive research in this area, one realizes that the subject matter herein is really an extensive one and one that is at the heart of due process, extending into virtually every area of the proceedings.

Prior to the development of the subject of evidence some key definitions and assumptions must be made.

The concept of procedural due process is not a frozen one. It does not refer to a single fixed style of procedure. The general observation of the Supreme Court has been that the quality of the procedure must be directly proportional to the gravity of the harm which may befall the individual whose guilt might eventually be ascertained.

> "What constitutes due process under any given set of circumstances must depend on the nature of the proceeding involved and the rights that may possibly be affected by that proceeding." [*Cafeteria and Restaurant Workers' Union v. McElroy*, 367 U.S. 886, 895 (1961)].

> "Therefore, as a generalization, it can be said that due process embodies the differing rules of fair play, which through the years, have become associated with differing types of proceedings. Whether the Constitution requires that a particular right obtained in a specific proceeding depends upon a complexity of factors. The nature of the alleged right involved, the nature of the proceedings, the possible burden on that proceeding, are all considerations which must be taken into account." [*Hannah v. Larche*, 363 U.S. 420 (1960)]

The degree of procedural due process is a function of the seriousness of the offense. Thus, the following remarks on the amount of due process required at student disciplinary hearings apply only to those kinds of offenses which could result in substantial jeopardy to the student's academic career, i.e. expulsion and longer suspensions, those for longer than from two to five days.

A second assumption need also be aired prior to development of the subject. If due process depends upon the seriousness of the deprivation, then it must be determined whether or not education is such a basic right that its deprivation to a student would constitute a serious one.

The courts in a line of cases beginning with ***Brown v. Board of Education***, 347 U.S. 483 (1954) and advanced in *Serrano v. Priest*, (96 Cal. Rptr. 601, 487 P. 2nd 1241, rehearing denied October 21, 1971) had declared education to be a fundamental right of every citizen. As such where the state undertook to provide that right, the Fourteenth Amendment requires the right to be proved on an equal basis and that deprivation of the right could only be made consonant with due process of law. *Dixon v. Alabama*, 294 F. 2nd 150 (1961) and other cases [see especially ***Sullivan v. Houston Ind. School District***, 333 F. Supp. 1149 (1971)] applied that theory to student disciplinary proceedings to insure due process.

Recently, however, The United States Supreme Court in ***San Antonio Ind. School District v. Rodriques***, 93 S. Ct. 1278 (1973) declared that education was not a "fundamental right" to be implied in the United States Constitution. In addition, the Michigan Supreme Court in a rehearing of its School Finance case ***Milliken v. Green***, vacated an earlier position that education was fundamentally important. I do not believe that these two opinions necessarily diminish the responsibility of school boards to provide the greatest degree of due process to students. The Michigan Constitution provides for "a free public and elementary" school system . . . "without discrimination." The Supreme Court did not provide a full rationale for vacating its earlier decision, but the Constitutional unimportance or non-fundamental nature of the right to an education in Michigan could not have been involved here as it deemed to be at the Federal level. (It would be most unusual for the Court in another area, that of the legality of strikes of public employees in education, to hear arguments that education was not "essential" and fundamental to our society.) Therefore, the second assumption I have made is that education in Michigan *is* a fundamental right, or at least so important as to require as strict an application of due process as the deprivation of other rights of juveniles, such as the placement in a juvenile home or other juvenile disciplinary punishment.

The basis for most of the law involving due process in student disciplinary hearings comes not from school cases but from juvenile proceedings in courts and other administrative bodies.

The first of these decisions is the well known case of ***In Re Gault***, 387 U.S. 1 (1967). In *Gault*, the Court recognized the seriousness of the contemplated penalty (commitment to a state institution), and held that an individual's rights in such proceedings, whether he be an adult or a juvenile, must be protected to insure that the essentials of due process and fundamental fairness were carried out. It held that the basic Constitutional guarantees, the right to counsel, the right to cross-examination and confrontation, the right to adequate notice of changes and the right to be free from self-incrimination were essential in more than just criminal proceedings. Juveniles who were about to lose their rights must also receive fairness in their treatment.

The courts in *Dixon* and *Tinker v. Des Moines,* 393 U.S. 503 (1969) extended these rights to students who could not lose their rights as citizens at the school house gates. Students must be afforded "the rudimentary elements of fair play." (*Dixon* at 1589)

It is in the courts clarifying cases since *Gault* that one can see the problems involved with granting different degrees of due process in different proceedings.

The first of these was *In Re Winship,* 397 U.S. 358 (1970). This is a case that goes to the heart of the standard of proof to be used. Most school boards in Michigan following the Administrative Procedures Act of the state require that a decision be made upon the "preponderance" of the evidence. This is true among most boards throughout the country; as administrative bodies they follow that standard test. While the burden of proof at the hearing would still be on those who seek to deprive a student of his rights, the burden of proving a case with the "preponderance" standard has not proven great. (*Cuzick v. Drebus,* 431 F.2nd 594 (6th Cir.) 1970). Even where a court has found the limitation or curtailment of education to be the loss of a fundamental right, the state was held to a standard of "substantial burden of justification" [*Breen v. Kahl,* 419 F. 2nd 1034 (1969) cert. denied 90 S. Ct. 1836 (1969)]. This amounts to little more than a modification of the preponderance test. [see also *Schoville v. Board of Education of Joliet* 425 F.2d 10 (7th Cir) 1970, cert. denied 91 S. Ct. 51 (1970)].

In Re Winship involved juveniles who were convicted by a juvenile court judge of larceny mainly based on a preponderance of the evidence test and admittedly the judge was not convinced beyond a reasonable doubt. Mr. Justin Harlan discussed the crucial difference in the standard of proof:

> Professor Wignore, in discussing the various attempts by courts to define how convinced one must be to be convinced beyond a reasonable doubt, wryly observed: "The truth is that no one has yet invented or discovered a mode of measurement for the intensity of human belief. Hence there can be yet no successful method of communicating intelligibly . . . a sound method of self-analysis for one's belief," 9 J. Wigmore, Evidence 325 (3d ed. 1940).
>
> Notwithstanding Professor Wigmore's skepticism, we have before us a case where the choice of the standard of proof has made a difference the juvenile court judge below forthrightly acknowledged that he believed by a preponderance of the evidence, but was not convinced beyond a reasonable doubt, that appellant stole $112 from the complainant's pocketbook.
>
> First, in a judicial proceeding in which there is a dispute about the facts of some earlier event, the factfinder cannot acquire unassailably

> accurate knowledge of what happened. Instead, all the factfinder can acquire is a belief of what probably happened. The intensity of this belief—the degree to which a factfinder is convinced that a given act actually occurred—can, of course, vary. In this regard, a standard of proof represents an attempt to instruct the factfinder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication. Although the phrases "preponderance of the evidence" and "proof beyond a reasonable doubt" are quantitatively imprecise, they do communicate to the finder of fact different notions concerning the decree of confidence he is expected to have in the correctness of his factual conclusions.
>
> A second proposition, which is really nothing more than a corollary of the first, is that the trier of fact will sometimes, despite his best efforts, be wrong in his factual conclusions. In a lawsuit between two parties, a facutal error can make a difference in one of two ways . . . it can result in a judgement in favor of the plaintiff when the true facts warrant a judgement for the defendant.
>
> The standard of proof influences the relative frequency of these two types of erroneous outcomes. If, for example, the standard of proof for a criminal trial were a preponderance of the evidence rather than proof beyond a reasonable doubt, there would be a smaller risk of factual errors that result in freeing guilty persons, but a far greater risk of factual errors that result in convicting the innocent. Because the standard of proof affects the comparative frequency of these two types of erroneous outcomes, the choice of the standard to be applied in a particular kind of litigation should, in a rational world, reflect an assessment of the comparative social disutility of each.

Thus, if the principles enunciated in *In Re Winship* were to be transmitted to school situations a vast difference in the results of hearings would be observed.

A third case from the Supreme Court gives perhaps a greater clue as to the boundaries of due process at a juvenile proceeding. In *McKeiver v. Pennsylvania,* 403 U.S. 528 (1971) the Court refused to extend trial by jury to the arsenal of a juvenile's Constitutional defenses. The juvenile hearing would be required to afford those Constitutional protections necessary to insure that "fundamental fairness" would be carried out, but the Court would not require extention to a point at which it would become nothing more than criminal prosecution of a juvenile offender. There are several reasons why the trial by jury can be distinguished from other criminal rights extended, not the least of which is immense administrative costs, but those are not important to the discussion here.

The importance of McKeiver is that the Court warned that little is to be gained in persisting to try to define hearings as civil or criminal in nature as a basis for granting or denying due process rights. As the Court did not wish to specify what hearings required what procedures and at the same time did not overturn any part of *In Re Winship,* it would appear that for deprivation of serious rights, the full gamut of due process including a "beyond a reasonable doubt" standard should be required.

A fourth key case which must be explored is that of ***Madera v. Board of Education of City of New York***, 386 F. 2d 778 (2nd Cir) (1967). In a proceeding which was called a "guidance conference" and which could only result in a transfer of schools, the court held that there was no need for counsel to protect the students Fifth Amendment privilege against self-incrimination.

For an informed pre-suspension hearing strict rules of evidence would not be followed. However, the Court did warn that "what due process may require before a child is expelled from public school or is remanded to a custodial school or other institutions which restrict his freedom to come and go as he pleases is not before U.S." (at 788).

Similarly the Court in ***Esteban***, 277 F. Supp. 649; aff'd 415 F. 2d 1077; *cert. denied* 398, U.S. 965 (1970), in denying strict criminal procedure standards in schools, did see the need for stricter standards, where severe discipline was contemplated.

Even apologists for less stringent due process requirements in a student disciplinary proceeding indicate the gravity of the harm which could come to a disciplined student. "For, while the expelled student may suffer ***damaging effects, sometime irreparable, to his educational, social and economic future*** . . . the attempted analogy of student discipline to criminal proceedings against adults and juveniles is not sound." (emphasis added) p. 236. ***Student Protest and the Law***, ICLE 1968)

The application of these principles to the presentation of evidence in Michigan's student disciplinary proceedings proves to be most interesting.

As already stated, the ***In Re Winship***, "beyond a reasonable doubt" standard of evidence test is most unusual as a mode of operation, even in the most severe disciplinary proceedings in schools.

Presently, in view of administrative proceedings being considered as quasi-judicial in nature, the Michigan Courts have held that the general rules of evidence which apply in judicial proceedings do not necessarily govern in administrative proceedings: [***Doyle v. Kammeraad***, 310 Mich 233 (1945)] nor do rules of evidence relating to criminal proceedings apply in administrative proceedings. [***Martin v. Civil Service Commission of Detroit***, 313 Mich 639 (1946)].

Currently, a Board, before whom a student disciplinary hearing is conducted, may in its discretion admit and give probative effect to any evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs. In the alternative, such a board may at its discretion exclude incompetent, irrelevant, immaterial and unduly repetitious evidence. MSA 3.560 (175). There is little doubt that presently a Board, sitting in a student disciplinary hearing has a very wide latitude in determining which evidence is admissible or inadmissible in such a hearing.

Specifically, the application of Court decisions above might serve to challenge the general rule.

In the area of the admission of evidence from witnesses who are not present at the hearing, the *Gault* decision and others would seem to say that a student charged with misconduct has a right to demand that witnesses against him appear in person to answer questions, and if they do not do so, their statements should not be considered or relied upon by the Board. Even the witnesses fear of physical reprisal afforded no justification for depriving an accused student of the right to confront and cross-examine witnesses in *Tibbs v. Board of Education of Franklin Township*, 284 A. 2d 506 (N.J. Sup. Ct., 1971). In no case should the Board consider statements made against the student unless he has been advised of their content and of the names of those who made them, and unless he has been given an opportunity to rebut unfavorable inferences which might otherwise be drawn by cross-examination or otherwise.

Regarding the admission of hearsay evidence, generally, a witness cannot testify as to statements made to him by a third party in the absence of the party adversely affected by such statements. The reason for the hearsay exclusionary rule is based upon the idea that an accused party has the right to confront and cross-examine witnesses against him. When evidence is based upon hearsay, and upon the statements of third parties, it is obvious that the individual does not have the right of confrontation and cross-examination. This, of course, leads to denial of due process and also to the possibilities of perjury by a witness, or a genuine mistake by a witness, or misinterpreting or mistaking what the third party said to him. A school district would be justifiably challenged on the admission of hearsay in a student disciplinary proceeding.

The scope of evidence to be introduced at a hearing should also be very narrow and confined to the charges. All matters upon which the decision may be based must be introduced into evidence at the proceeding and the decision based solely upon such matters. Of course, the evidence presented must be specific enough to prove the charges [See *Strickland v. Inlow*, 485 F. 2d 186 (8th Cir. 1973) where alcoholic content of beverage was not sufficient to show students had an "intoxicating" beverage.]

Another problem of evidence occurs in the area of self-incrimination. It seems clear that a student's decision to remain silent at a board hearing cannot be considered as an admission of guilt. [*Gault, Caldwell v. Cannady*, 340 F. Supp 835 (1972), U.S. D.C., Tex.] The question, however, occurs as to the admissibility of statements made by students who had not been given notice of such a right to remain silent. Most courts rule against the requirement that "Miranda" type warnings be given to students to allow admissibility of incriminating statements made. [*Goldberg v. Regents of University of California*, 248 Cal. App. 2d 867 (1967), *Furitani v. Ewigleben* 297 F. Supp. 1163 (N.D. Cal, 1969)]. "The inconvenience and formality attached to the warnings of a right to counsel or to keep silent, and the interest in preserving a rehabilitative atmosphere would not seem to warrant those elements of criminal procedure." [*Buttney v. Smiley*, 281 F. Supp 280, 287 (D. Colo 1968)] The Joint Statement on Rights and Freedoms of Students (1967), however, does include the following: "Students detected in the course of serious violation of school rules should be informed of their rights. No form of harassment should be used by institutional representatives to coerce admissions of guilt or information about conduct of other suspected persons." Only time and further litigation will resolve this difficult problem.

Two other areas, covered in other parts of this program are also elements of evidence problems at a student disciplinary proceeding, but will only be covered briefly here. The first is the use of evidence which was had by means of an illegal searcher. A Board should not consider evidence obtained by police officers in an illegal search [*Caldwell v. Cannady*, 340 F. Supp 835 (1972). What constitutes such an illegal search beyond self-incrimination, has been discussed elsewhere.

The second area is that of the use of confidential student's records in a disciplinary proceeding. The Michigan statute (MCLA 600.2165) protects the student from disclosure of confidential communications to school personnel from being used in "any proceedings, civil or criminal, in any court of this state." It would be consonant with trends of due procecs if this protection would be extended to administrative proceedings, including Board hearings. This should be considered in any total reform of the area of student records which has been discussed elsewhere.

As a general proposition of law, the courts or the State of Michigan will not allow reference to polygraph examinations into evidence [*Stone v. Earp*, 311 Mich 606 (1951), *People v. Becker*, 300 Mich 562 (1942) and *People v. Frechette*, 380 Mich 64 (1968)]. It makes no difference if the proceeding is civil or criminal. The reason is that the polygraph has not yet attained that degree of scientific accuracy where it can be relied upon as a substitute for a trier of fact. Clearly none should be used in a student disciplinary proceeding.

It has been held that allowing two members of a "trial board" which was hearing charges against students to testify at a hearing and to discuss the information with other members of the panel did not deprive a student of fundamental fairness. [*Jones v. Tennessee State Board of Education*, 279 F. Supp 190 (1968)]. It would seem to be a much more defensible policy to bar this type of procedure and to insure that against the objections of a party, the judge or hearing panel residing at the trial may not testify at that trial.

In conclusion, it would appear that due process guarantees must be substantially afforded a student in a disciplinary proceeding, with maximum protection to be offered when long-term suspension or expulsion might result. To read the cases any other way, the juvenile law would be in the defensible position of mandating more safeguards for the delinquent child than for the pre-delinquent one. When a severe interruption in a child's life can occur, there is no valid reason for withholding the safeguards of a fair hearing. For it is at this point, when theoretically the chance for rehabilitation of the child is best, there is the least assurance that he will receive a fair hearing. Unless this is changed, one cannot wonder why the system doesn't work.

POLICE-SCHOOL CONTACTS

DONALD E. ERICKSON

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What I want to do in my remarks is to describe the scope of a police officer's authority in a school setting, to discuss some quasi-criminal to criminal problems which can arise in the school setting and, finally, to describe some police-school liaison programs that have been started around the country.

However, before I start into my assigned topic, I would like to respond to some of the previous remarks in the workshop. I feel that much of what has been said is too pessimistic, and I want to describe the positive aspects of due process.

I do strongly endorse the other speakers' statements that schools must and should be fair to their students, but such statemens forget to mention the advantage an administration gains. When the requirements of due process are met, then a school administrator can rest assured that his or her action is based upon all the facts and will be sustained in any appeal proceeding. There are three reasons for taking the trouble to provide due process:

1. It is fair and is what should be done to reach the right result.
2. It takes less time in the long run and is easier to administer once the process is familiar.
3. The most negative reason is that courts will reverse disciplinary action when there is no due process given.

Generally, due process is a legal concept which is concerned with two procedural matters. First, every person who is being denied a right or privilege by some type of governmental action is entitled to ***notice*** of the specific charges against him or her. Second, every person is entitled to have ***an opportunity to be heard*** (the so-called hearing requirement).

To comply with these standards, a school board and its administration should work together to *adopt a written code of conduct and a written discipline code*. The code of conduct should be carefully written so it is specific and neither too vague nor too broad. This code will form the first part of the notice requirement, and furnishing a written charge that state what part of the code has allegedly been violated and that sets a date and place for a hearing or permits waiver of the hearing will fulfill the notice requirement.

The hearing requirement was adequately described for you by the other speakers and the videotape demonstration, so I will respond to only one other legal concept previously discussed.

All school regulations must be either reasonably and rationally related to a legitimate school purpose or they must be justified by a compelling school interest. The second test applies only when a school regulation restricts some fundamental right of the student or other person being regulated, and the burden of proof is upon a student to show that the regulation does not rest upon a reasonable basis. Alternatively, the student may prove that a regulation affects a fundamental right, and then, a compelling interest in enforcing the regulation must be shown. In other words, you are confronted with two levels of legal requirement. First, the conduct to be regulated must be fairly regulated in the light of legitimate school objectives that take into consideration whether that conduct is constitutionally protected. Second, proper procedures must be followed in imposing punishment or discipline.

The dress code concept illustrates the first principle. The Michigan Court of Appeals apparently felt that the dress codes before it in the two decided cases were not reasonably related to any legitimate school purpose. Even though it is difficult to say whether any dress code would be constitutional, my personal recommendation would be to avoid adopting any dress code other than a few provisions related to health of safety like requiring footwear or requiring hairnets in cooking class or machine shop.

At any rate, those are a few of my reactions to the ideas that have been presented in this workshop. I remind you that the concepts of due process work both ways—they prevent unjust punishment, and they make just punishment a certainty.

I would like to turn to my original objectives and begin with a discussion of police authority within a school. A police officer may be called into a school by the administration to provide assistance in maintaining order or to make an investigation, and this is often done. However, one thing which should be avoided is utilization of police for matters of internal discipline and for matters that require minimal, but immediate, attention. That is counterproductive and like a mother saying to her children, "Wait until your father comes home." Furthermore, it dilutes the effectiveness of the police when they are dealing with a more serious problem that can only be handled by them.

In the course of routine policework, officers have the authority to enter schools when they are executing a search warrant or when they are attempting to make an arrest. An arrest can be made in three general circumstances: (a) when an arrest warrant has been issued, (b) when there is probable cause to believe that a person has committed a felony or (c) when a person has committed a misdeameanor in the presence of a peace officer. Of course, an arresting officer must have reason to believe that the suspect is in the school at the time he or she comes to the school. In these situations, school officials have a legal obligation to avoid interfering with police in such cases.

Police agencies want to work cooperatively with school officials; therefore, you who are administrators will be contacted first. Searching for evidence, making arrests and investigating criminal cases will be done only when necessary or when school-related. In any event, the police will cooperate to minimize disruption of school routine and activities. Of course, this is ideal; but you can reasonably expect this type of police response.

I would like to turn from the authority of the police to some situations that might arise in your schools that involve legal complications.

Bomb Threats

If a bomb threat is received in any form, as soon as practical the local police agency should be contacted. Police have the resources to deal with a bomb, if one is found, and they also have the resources to investigate the case to uncover the person making the threat. Even if a student makes the threat, this is a criminal matter, and, if either the mails or a telephone is used, it can become a federal felony.

Disruptions and Demonstrations

Aside from classroom or hallway discipline, disruptions threatening injury to persons or property may require police aid. However, you as school administrators and the police must be aware of the boundaries of freedom of speech, press and assembly. Since the students' rights are discussed in other contexts during this workshop, I will not talk about the First Amendment here, but I will briefly describe the potential criminal matters that can arise out of these situations.

Anyone under seventeen can be processed as a juvenile delinquent, and, of course, there are general charges of disorderly conduct or breach of the peace that might be made. There are statutes which prohibit willful interruption of school routine or interference with traffic on streets and highways. When *reasonable* school regulations prohibit entrance to or remaining upon school premises, then *reasonable* application of those rules can be used to exclude students or others from the school and its grounds, and in the aggravated case, failure to depart can be the basis of a criminal trespass charge. Finally, whatever conduct that school administrators may find themselves faced with may be criminal, like felonious assault (with a weapon) or aggravated assault (where there is serious injury). These specific crimes should be referred to the police for handling and investigation if criminal prosecution is desired. Of course, school administrators, like businessmen and citizens, can decide against filing a complaint, and police do not generally act without a complaint.

Non-Student Disrupters

When a person is around the school or its grounds without any legitimate purpose, they can be excluded by school regulations, and in aggravated cases Michigan's criminal trespass law would be applicable. Unlike students, these problems will usually require handling by the police or a security guard because the school does not have *in loco parentis* authority over non-students.

Search and Seizure

Since more weapons and drugs are being brought into school, I hear many questions about when and how a search or seizure can be conducted. The basic guiding principle is that a person has a right to all reasonable expectations of privacy, and what expectations are reasonable are tested by common sense standards of what the ordinary person would expect under any given set of circumstances.

Assuming that an individual would reasonably expect a place to be private, the police cannot generally search the place or seize the thing involved. The expectations being in cases where the person voluntarily consents or where the officer is acting on probable cause in regard to a particular place and thing. Furthermore, in many, if not most, cases a police officer must have a warrant.

In internal, disciplinary actions school administrators are not bound to the same high standards as a police officer is, but some restraint must be exercised or else a student might successfully challenge any punishment imposed upon him or her by taking legal action in court.

In 1973, the United States Supreme Court strongly affirmed the concept of search with voluntary consent and even clarified that concept on February 20, 1974. Where this concept is most important is in searching the person of a student. The basic legal test of whether a consent-type search is valid is whether under all the circumstances the consent was voluntary. This is particularly crucial if evidence found is going to be used later on in a criminal case, and consent can also justify searching a desk or a locker.

Since a desk, locker or other school property is only provided for the use of students, there is authority for searching those areas by school officials. A routine inspection procedure can be most clearly justified on this basis; however, a one-time search for specific evidence is less readily justified. Where this has been seen most often is in relation to cases involving dormitory rooms. Personally, I favor the approach that the right of a principal, a teacher or other school administrator to search lockers, desks, etc., should be spelled out in written school regulations given to the students. In any event this type of nonconsentual search is very much an open, legal question even though there are cases recognizing some of these searches as legal. The most important consideration is your good faith.

Finally, I am often asked about police requests to search a student's locker or other personally assigned areas in school. In its February decision, the United States Supreme Court ruled that police may search any place for evidence against a criminal suspect if they abtain voluntary consent from a third person who has general access to and control over the place or thing. A very key ingredient is the third person's right of control. When you are requested, by the police, to consent to such a search, you should consider two things: (1) the reasonableness of the police request and (2) the authority that school regulations give you to enter the assigned locker or area. If the request is reasonable and if you have authority to enter, then you may cooperate with the police, and evidence, if any, will be legally seized.

Police/School Liaison Programs and Conclusions

I will close with a few remarks about police-school liaison programs that have been developed to improve police/student relations, to provide students with more information about law enforcement and to improve school security.

First, I would like to tell those of you who would be interested in some type of liaison program how to obtain information. Federal funding is offered to your local, police agencies through the Michigan Office of Criminal Justice Programs, and your local, police agency would generally send an application to that office through its regional planning agency. Of course, local funding can be used if it is available.

Turning to pilot project ideas around the country, I will describe the general outlines of a program in San Diego, California. To end loitering around schools by nonstudents, a small task force, divided into two-man patrols, was assigned to six inner-city schools. This program was started in the final weeks of one school year, and during the following year more officers were assigned, and they also attempted to develop better rapport with students by giving classroom talks and having informal rap sessions with students.

In Phoenix, Arizona, a program has been developed to place officers in schools as resource persons. Except in cases of felonies or other serious disturbances, these officers do not engage in any security activities around the school. They serve as counselors on law-related problems and speak in classrooms on law enforcement. Police officers who are qualified for teaching are conducting courses on law enforcement subjects in Los Angeles; Des Moines, Iowa; and Montgomery County, Maryland; and a pilot project to develop an understanding of law enforcement in elementary schools has been started in Ventura County, California. Most of these programs are described in greater detail in the articles listed in my bibliography.

In closing, I would like to say that good relations between police, students, and schools are more important than ever before. However, developing awarenes of rights as well as the expansion of those rights in the field of criminal law makes the creation of those relationships more difficult. As school administrators, you need to be aware of what assistance police agencies can provide and what legal limitations there are.

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PART III

EDUCATING THE SCHOOL COMMUNITY ABOUT SCHOOL AUTHORITY AND STUDENT RIGHTS

EDUCATING THE SCHOOL COMMUNITY ABOUT SCHOOL AUTHORITY AND STUDENT RIGHTS

Robert L. Potts

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Upon noting the subject for this overview and the stated objective of familiarizing participants with the legal rationales for educating the school community about school authority and student rights, it would appear that there are negative connotations. Who needs to be convinced of the longstanding, awesome authority of the educational establishment, the support of the law and the courts to this authority, the imposing if not intimidating posture of school authorities—the professionals in education for parents and students?

Perhaps it would be more pertinent to restate the subject: educating the schools and school authorities on community prerogatives and student rights. For there is still the resistance of "professionals" and educational bureaucracies to meaningful parent/citizen involvement in the schools, and a recalcitrance to even nominal respect for the rights of students as citizen/client.

Let me say here that we may debate the parameters and definitions of rights, but we cannot overlook the responsibility to the paramount student right to a quality education and equal educational opportunity. Not only is there need to consider this "right" for those who fade into the woodwork, with good behavior, never noticed, "don't give us any trouble," but also for that growing number who have claimed attention, "cried out" for acceptance and educational help but because of their ostensible "anti-social" or unacceptable behavior have been eliminated and forgotten.

So, in a restatement of this overview, it is well to consider with Richard Hatcher, Mayor of Gary, Indiana, in his address to the recent meeting of the National Conference on Higher Education, that it would appear that

> ". . . the entire educational process often seems geared more to imparting the discipline of the work force than imparting knowledge and encouraging young people to think for themselves. Rather than being educated for democracy, young people are educated to accept authority. Institutions like student government prepare young people to accept sham democracy by schooling them in situations where everyone knows that the actual power to make important decisions lies elsewhere."[1]

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[1] American Association for Higher Education, March 10–13, 1974, Chicago.

However, we must be aware that there have been significant changes in the area of student rights and thus student power by virtue of evolving interpretations and emphases of the courts. Needless to say, no other institution of our country has had greater impact and effect upon education and schools than the courts. Second to these, of course, are federal, state and local governments.

This is not to underestimate the observation and belief of Patricia M. Lines, in her article on "Codes for High School Students," who prefers to believe that there is another major influence upon a changed focus upon students rights in our times. She postulates that

> "Growing student activism in high schools seems to be inspiring the wholesale manufacture of new rules, regulations, student codes and statements of 'rights and responsibilities.' "
>
> However, she sees in this movement some negative or spurious reasons: "Many such codes have been created by school administrators and teachers seeking to control the school environment." (I will allude to the Ann Arbor 1972 code.)

But, she allows the positive conclusion that

> "In contrast, students, sympathetic teachers and administrators, and lawyers groups have also been developing codes. Generally, these codes acknowledge the existence of students' rights, define and list offenses, outline a fair procedure to follow if a student is accused of some such offense, and state specific punishments for specific offenses."[2]

Robert L. Berkman in the November 1970 issue of the *Harvard Educational Review,* under the title "Students in Court: Free Speech and the Functions of Schooling in America," has given a description of the evolution of the courts' changing perception of the purposes of education and the authority of the schools.

"American courts," he concludes, "have perceived the political aim of American education and have generally accepted a traditional disciplinarian concept of educational purpose."

"In general, courts view school boards as administrative agencies of the state and thus consider a school board act proper if it is 'reasonable.' Included in the determination of 'reasonableness' is usually some explanation of how the act serves a legitimate educational purpose. But, the greater part of most decisions is devoted to declarations of judicial reluctance to scrutinize the activities of local school boards." As in *Pugsley v. Sellmeyer:*

> ". . . courts hesitate to substitute their will and judgement for that of the school boards which are delegated by law as agencies to prescribe rules for the government of the public schools of the state, which are supported at the public expense."

A notable departure from this tradtion of judicial timidity is the decision *Tinker v. Des Moines Independent School District* (1969) in which the

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[2] *Inequality in Education,* No. 8, June 15, 1971.

Supreme Court extended the First Amendment rights of speech and expression to secondary school students. Implicit in this decision was a view of the purposes and methods of education different from that traditionally expressed by American courts.

Let me summarize briefly Berkman's report on the history of court decisions and traditional conceptions of educational purpose.

"Public education in America was never seen merely as a means by which all could share the inherent pleasures of mental exercise and development. Intellection as an end in itself was secondary to the political goals of public education. Proponents of public education were more concerned with training citizens than with increasing scholarship. Hence, the schools were expected to teach discipline and respect for authority.

"The educational purposes perceived by the courts originated in this over-riding political, rather than intellectual, aim of American education. The view that discipline and respect for authority were major goals of public education was frequently enunciated by the courts.

"In *Pugsley v. Sellmeyer* (Arkansas, 1923) a school rule prohibited the wearing of transparent hosiery, low-necked dresses or any style of clothing tending toward immodesty in dress, or the use of face paint or cosmetics. The appellant wore talcum powder to school and was denied admission. In upholding the action of the school authorities, the court said:

> "It will be remembered also that respect for constituted authority and obedience thereto is an essential lesson to qualify one for the duties of citizenship, and that the schoolroom is an appropriate place to teach that lesson."

"In *Board of Education v. Purse* (Georgia, 1897), a parent visited her child's school and criticized the teacher before the other pupils. The Supreme Court of Georgia upheld the expulsion of the child as a means of impressing upon the other children the consequences of disrespect for authority. The court treated the disciplinary measures not merely as neutral devices for maintaining an orderly learning environment but as normative principles themselves part of the content of education.

"The court in *Dresser v. District Board* (Wisconsin, 1908) took the same approach. Here, two high school students took a poem which satirized school rules to the office of a weekly village newspaper which published it. The Supreme Court of Wisconsin upheld the expulsion of the students on the ground that the poem had an injurious effect on the discipline of the school.

"The notion that the creation of social unity and equality is a purpose of public education also worked its way into court decisions. The unifying process involved fitting diverse groups of Americans—particularly immigrants and the 'unruly' poor—to the pattern American educators and statesmen held in highest esteem white, middleclass Protestantism. Judicial approval of the unity theme facilitated the process.

"The theme of social unity is most prominent in cases dealing with anti-fraternity regulations in secondary schools, i.e., ***Burkitt v. School District***

(Oregon, 1952), *Robinson v. Sacramento City Unified School District* (California, 1966).

"The only court to overturn a school board anti-fraternity regulation was the Supreme Court of Missouri in *Wright v. Board of Education of St. Louis* (Missouri, 1922).

"Attempts by the schools to eliminate individualistic behavior under the guise of helping students to adjust to society have also been ratified by some courts. Recent examples center around cases involving school grooming rules, i.e., *Favis v. Firment* (1967), *Ferrell v. Dallas Inpendent School District* (1966), and a very recent case in Texas, concerning a kindergarten student, overturned by the higher court.

"Patriotism (as a legitimate purpose of education) was another theme reflected in several court cases involving the matter of 'saluting the flag,' i.e., *Minersville v. Gobitis* (U.S. Supreme Court 1939), etc.

However, Berkman sees the Tinker case as being most significant in an emergent liberalization of the First Amendment and the educational process.

"In *Tinker v. Des Moines Independent School District*, the Supreme Court held that First Amendment rights, applied in light of the special characteristics of the school environment, are available to students. School officials may not prohibit the expression of one particular opinion without evidence that such action is necessary to avoid material and substantial interference with discipline or the work of the school. (This case involved the wearing of black armbands in opposition to the Vietnam war).

"Justice Fortas, writing for the majority, characterized the wearing of armbands as 'closely akin to pure speech' . . . unaccompanied by any disorder or disturbance on the part of the petitioners. (Also note: *Cox v. v. Louisiana*—1965—relating to free speech and assembly; *Brown v. Louisiana*—1966—breach of the peace conviction for occupying public library).

"Much of the dicta in the majority opinion suggest that the court's opinion represents a remarkable departure from the conceptions of the purpose and process of education incorporated in the court decisions of the last hundred years. There is first none of the familiar rhetoric about the disciplinary purposes of education. The extension of first amendment rights to students means that in some circumstances courts will vindicate the actions of students who disobey the commands of their teachers.

"In the Tinker case the majority asserts that state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Justice Fortas shares the progressives' belief in the student as a participant in the educational process."

As a consequence of the gradual shift of emphasis in the courts, the doctrine of in loco parentis slowly fades away. As Leon Met has observed:[3]

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[3] "Student Power," Chapter 9, *Education for an Open Society*, Association for Supervision and Curriculum Development, Washington, D.C., 1974.

> ". . . parental responsibilities and powers that used to belong to educators are being withdrawn from them and given to students, returned to parents or assumed by the courts. Students are not so much coming as children to our schools as they are becoming clients and citizens.
> This new client/citizen role has profound implication for student power in relation to institutional power. The change makes obsolete the absolute authority formerly vested in school people to control their charges."

Indeed, the age of more meticulous and systemic accountability is dawning, though I would say, with great reluctance. The two cases in the San Francisco area of recent are points in fact: the class suit involving the teaching of English to Chinese students, and the other the case of the San Francisco High Schol graduate "Peter Poe," who is suing the school for $1 million for alledgedly failing to teach him to read and write.[4]

Also we may point to the recent Michigan State Court of Appeals decision (3/29/74)—*Ann Arbor News*) regarding the dress code of the Lakeshore High School (Berrien County), stating that:

> "The purpose of a school . . . is to educate and train students, so any rules must be for this purpose. . . . there is no connection between the hair styles of the boys and the establishment, maintenance and management and the carrying on of a public school."

We could doubtless list many other very recent cases to show the progression in legal recognition and insistence upon the rights of students, such as the Idaho Supreme Court action last year, which overruled the Idaho School District's dress code which prohibits female students from wearing slacks, pant suits, etc. The court ruled that

> "the enactment of such a code exceeded jurisdiction and authority of the school district and the school board."

I would, therefore, agree with Leon Met's analysis that perhaps the U.S. Supreme Court 1967 Gault decision is the landmark:

> "It affirmed that neither the Bill of Rights nor the 14th Amendment to the Constitution is for adults alone. That and other federal and state court decisions have extended to minors the protections afforded all citizens by our Constitutions. In fact, the tendency has been to extend more protections to minors precisely because they are deemed to be more vulnerable to abuse and mistreatment by adults. Specifically, courts have extended to students the rights of due process, freedom of inequity, expression, association, peaceful assembly, equal educational opportunity and freedom from discrimination.
> . . . Dress codes, censorship of publication, restriction of political activity, arbitrary administrative codes and actions, all have been in various legal actions."

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[4] *MASB Journal*, March 1974.

Therefore, within constitutional and legal limitations or parameters, school authorities and those who engage in the development of student codes, must do so with due regard for the rights of students, such as

(1) freedom of speech and press
(2) freedom of assembly and association
(3) freedom from vague, uncertain or overly broad regulations
(4) the right to privacy in personal affairs
(5) the right to procedural due process

In toto, schools must recognize that

> "students in school as well as out of school are 'persons' under the constitution."[5]

Several years ago before the Michigan Society of Planning Officials at Gaylord, Michigan, I enunciated a principle which I believe is as valid and as encumbent upon school officials as upon planners. It has to do with responsibility for facilitating citizen participation. It is fruitless, if not hypocritical, to enunciate belief in the productivity of student/parent/citizen involvement in the educational process or management of the schools and not assume leadership, as professionals, to assist this process. I believe that the school has an obligation to assist and to provide resources to insure that the community of adults and youth have the information, skills and the opportunities to make constructive input and influence outcomes of these institutions and services.

Though most parents and interested citizens have felt the authority of the schools—in the use of school facilities and services, in discipline matters, in meeting various requirements—it must be fairly clear to most that, by and large and in most communities, there is a great, unintelligible gulf between the schools and the citizen/clients in knowledge of school rules, authority, expectations, procedures for feedback and grievances.

It is as Larry Cuban has commented in his article entitled "Teacher and Community"[6]

> "As others have pointed out, the gap between community and school may be the result of class, color, or value conflicts. No doubt such explanations have validity, and evidence can be marshalled to support each of them. But none of these explanations attacks the myths of professionalism, one of the deeper problems that has become both a cause and effect of that distance between home and school.
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> "By myth I mean the belief that schoolmen know precisely how kids must be taught, how they should learn, and what their true nature is. According to one popular analogy, teachers and principals know so much more than parents about instruction, curriculum, and scheduling

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[5] *Tinker v. Des Moines Independent School District.*

[6] Cuban, Larry, "Teacher and Community," *Harvard Educational Review,* Spring 1969, pp. 253–272.

> that to expect intelligent questions and helpful suggestions from parents would be as unprofessional as for a doctor to ask a cancer patient for his opinion on whether chemotherapy or cobalt treatment should be used. The analogy, of course, is ridiculous. Information is not wisdom. "Thus, 'professionalism' has been a code word for keeping parents at arms length, for resisting the development of any meaningful face-to-face contact between school and parent, between teacher and community. Because schoolmen react negatively to inquiries about performance of youngsters, teachers, or the school, no personal relationships with the broad spectrum of the community can materialize.
>
> "More face-to-face and sustained contacts between school staff and community in dealing with children could bring a humaneness to community relations that is obviously missing. Bringing community people into the schools as paid aides is one possibility. Another is hiring community workers as part of the faculty. Joint planning between community leaders and schoolmen is yet another possibility. None of these, however, deal with the greater need to expand the vision of teachers to see that their role requires active involvement with parents and participation in community life."

So, there is need for more viable models for facilitating this two-way communication and involvement. Cuban has indicated some approaches which have been made operative. This is being done to some extent in the Ann Arbor Schools in the Title I, Early Childhood Education Program and in the employment of thirteen Human Relations Workers in the secondary schools. There is still place for more effective, periodic, clear, informative media—newsletter, audio-visual media, etc.—directed to students, parents and the community at large. However, growth in these understandings and in constructive influence upon the educational process are best furthered through creative participation in the various aspects of the operations, programs and processes of the institution, particularly

(1) in the determination and development of codes, regulations and their implementation which effect students and parents;

(2) in the development and implementation of the curriculum of the school and the use of other resources; and

(3) in collaborative staff, student and community development in the achievement of educational goals.

Recently, at the opening session of the Program for Educational Opportunity's conference on "Models for New Approaches to Staff Development," the keynote speaker, Mr. Ulysses Byas, presented an emphasis for effective staff growth and development which I believe to be pertinent to this topic of educating school and community. For him, the key to staff growth and development lies in staff investment of their energies, resources and creativity in programs which help parents and students develop their potentials. He gave some examples or models of what they were doing, i.e., school-age parents program, teacher-aides and outreach workers, media, etc.

In this light, I believe that we can further the understandings, productive feedback and responsibility of the several components of the school community in such matters as student behavior, rights and responsibilities, when and where we will invest our resources, energies and creativity to help parents and students become partners in the planning, operation, programs and evaluation of our schools.

Also very recently, a committtee of representatives of the various unions connected with the schools and of central administration met to consider the "prevention of disruption in the schools." One of the recommendations of the committee, besides that it should be disbanded, was that each school should establish a school-community advisory council. Such a council would be an integral part of that school, to consider all facets of that school's program, operations, climate; assist in planning and some aspects of implementation and evaluation; and make recommendations, primarily to the principal, for maintaining and improving mental health, safety and educational quality. Without further elaboration, you will recognize this model as being characteristic of the Flint Community School structure.

Now, this may not be the ultimate in models, but I believe that something similar which legitimizes and operationalizes such an ongoing viable team of students, parents, educators, engaged in mutual consideration for all students and all that impacts upon them, is essential, both to advancing the educational quality of our schools and to more workable and positive methodologies for student rights and responsibilities.

Finally, we must admit that many if not most adults and professionals—not limited to education—are afraid, if not intimidated, by the prospect of shared planning and power, because it may and does mean for change. And, change connotes personal costs and struggle.

Well, perhaps it is pertinent for us to keep in mind the admonition of Frederick Douglas, if we would change and achieve a larger measure of freedom for our youth and adult citizen clients:

> "If there is no struggle, there is no progress. Those who profess to favor freedom and yet depricate agitation are men who want crops without ploughing up the ground. They want rain without thunder and lightening. They want the ocean without the awful roar of its many waters. This struggle may be a moral one, or it may be a physical one, and it may be both moral and physical, but it must be a struggle. Power concedes nothing without a demand. It never did and it never will. Men may not get all they pay for in this world, but they must certainly pay for all they get. . . ."

NEUTRAL PRINCIPLES FOR THE DEVELOPMENT AND EVALUATION OF DISCIPLINE AND STUDENT RIGHTS AND RESPONSIBILITY POLICIES

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Introduction

School policies afford one means of translating the law as it relates to school authority and student rights into practice. The process of developing policies which delineate the scope of school authority and the extent of student rights has historically been less than systematic, often reflecting the tense and chaotic events that ushered them into existence. In fact, as recent as three years ago written policies were often totally absent in up to half of all Michigan districts and woefully inadequate in many others.

A carefully developed policy is particularly imperative since different segments of the school community possess diametrically opposed and deeply held attitudes on the subject and the law remains relatively fluid. In addition to providing uniform direction and educating affected persons concerning developments in the law, written policies serve a number of other positive functions. Such policies, for instance, contribute to sound educational philosophy, continuity and stability of district practices, clarification of conflict-generating ambiguities, equal treatment of students and uniform access to educational services, and the satisfaction of state requirements, as in the apparent case of Michigan.

An Overview of the Policy Development Process

Recognizing the significance of policy and particularly its educational function, infinitely more rational procedures must be followed in developing policy than employed only a few years ago. Based on this writer's experience, those procedures should include the following self-explanatory steps:

Determination of the Need for Policy Development or Revision
↓
Identification of Persons to be Involved
↓
Provision of Information and Training for Participants
↓
Development of Proposed Policy
↓

Submission of Policy to Others for Review
↓
Revision and Preparation of Final Document
↓
Submission to Board for Formal Adoption
↓
Dissemination of Policy and Education of School Community
↓
Implementation of Policy
↓
Monitoring, Evaluation and Revision

NEUTRAL PRINCIPLES FOR DEVELOPING POLICY

When discussion turns to discipline or student rights and responsibilities there are few neutral persons. There are those who contend school officials are being asked to surrender control of the public school system to students under threat of legal action or disruption. On the other hand, there are those who assert that the remedy for alienation and disorder among the young is not less, but more freedom.

Regardless of disagreements as to substantive responsibilities and rights or a divergence of educational philosophies, there are perhaps some neutral principles to be adhered to in the formulation or evaluation of policy governing students. In the following pages ten such principles are set out as a possible guide.

1. Involvement
2. Scope
3. Clarity, Preciseness and Conciseness
4. Legal Ambiguity
5. Reasonableness
6. Organization and Format
7. Accountability
8. Dissemination
9. Data Collection and Policy
10. Policy Modification and Review

INVOLVEMENT

Representatives of all affected members of the school community—students, parents, teachers, administrators, and board members—should be involved in the formulation of the policy. Prior to adoption the policy should be reviewed by the school attorney and an attorney of the committee's choosing.

The importance placed in means of governing as contrasted to the ends of government is what uniquely characterizes democracies. One of the prime purposes for schools is to educate individuals to function in a democratic society. Consequently, the involvement of all groups in the school community is philosophically essential and educationally sound.

It is also strategically sound for all groups to be involved, though for varying reasons. Each group benefits by insuring their point of view is represented. Students have the opportunity to air their complaints and convey their perspective directly to administrators and board members; administrators can acquaint students and parents with the practical and legal constraints under which they must act; and board members may derive a much sounder understanding of the problems in the schools and the concerns of the parents. Perhaps less obvious, but no less important, is the result that each group and individual "owns" a piece of the policy given their direct involvement and substantial investment of time. This ownership often proves crucial at the adoptive state.

Legal counsel should also be consulted since state laws must be compiled with regardless of their undesirability from the students' point of view. By the same token, regardless of the representativeness of the committee, the degree of consensus it enjoys, or the subsequent ratification of the policy by a majority of student body, students in schools have certain rights which can only be waived by individual students who do so knowingly and voluntarily.

The committee's opportunity to submit the document to an attorney of its own choosing, and preferrably one of the students and parents' choosing, serves a number of valuable purposes. It lends credulence to the sincerity of the district by providing expert and unbiased assistance to citizens and students in the completion of their charge. Additionally, it serves to identify the most vulnerable provision of the proposed policy. This facilitates policy reexamination prior to adoption, thereby avoiding the all-too-prevalent face-saving tendency of many policy-making bodies to defend a legally or educationally untenable position at substantial cost in terms of dollars and credibility.

SCOPE

The policy should collect in one document all component policies governing school-student relations including those explaining student rights as well as responsibilities, prohibitions and sanctions.

The increasing prevalence of Student Citizenship Policies reflects the recognition that: (1) responsibilities at law accompany rights rather than precede them, (2) an unacknowledged right is often either denied by the schools or exaggerated by the student, (3) ignorance or conscious denial of a right is costly in terms of both economics and credibility, (4) rights provide peaceful avenues of protest which if obstructed may detour student energies into less constructive forms of protest, and finally, (5) it is educationally and ethically imperative that schools practice the constitutional principles they teach.

(See Appendix A, P.E.O. Checklist of Considerations for Developing and Evaluating School Policies Governing Students for possible inclusions.)

CLARITY, PRECISENESS AND CONCISENESS

The policy should be as short as possible but as long as necessary to provide the student reasonable notice of what conduct is permitted and prohibited and the consequences for violating any rule.

Two means of enhancing clarity are (1) to incorporate a glossary of terms

Such as—

ARSON—The intentional setting of fire.

ASSAULT—Physical threats of violence to persons.

BATTERY—The harmful striking of another.

THEFT—Taking property that belongs to someone else or the school without permission.

TRESPASS—Being present in an unauthorized place or refusing to leave when ordered to do so.

EXTORTION—Obtaining money or property by violence or threat of violence or forcing someone to do something against his will by force or threat of force.

or (2) to provide illustrative examples—

"Disruptive conduct"—is conduct which materially and substantially interferes with the educational process, such as,

— reading or distributing unassigned materials during class
— pinning buttons on students who do not want to wear them
— staging a sit down in the principal's office or corridor of the building
— shouting to students in classrooms from the hall or outisde grounds.

Besides the obvious behavioral and psychological advantages of clarity, there are a number of legal reasons why policies should be reduced to writing and be as clear and precise as possible.

Courts may invalidate imprecise policies on one of the three basic grounds: (1) *due process* or basic fairness where severe sanctions are imposed for conduct not expressly prohibited in a written policy, unless the conduct is obviously prohibited; (2) *vagueness* where the average student must guess at the meaning of a rule; and (3) *overbreadth* where constitutional rights are being constricted by regulations more encompassing than necessary to accomplish a legitimate school goal.

LEGAL AMBIGUITY

Where the law is unclear, an attempt should be made to ascertain the most probable interpretation and incorporate it in the policy noting its uncertain status.

One function of local policy should be to clarify uncertainties in the law, recognizing that whether the interpretation is ultimately right or wrong, the clarity allows students to make choices with predictable consequences and also facilitates legal challenges. This is particularly necessary when the precise issue has not been raised in the jurisdiction in question or has been decided differently by courts of the same level of authority.

For instance, the issue of whether students must submit their underground newspaper to the principal for review before distributing it has not been authoritatively determined by the U.S. Supreme Court or the 6th Circuit Court of Appeals. Thus a local board in Michigan, Ohio, Kentucky or Tennessee could adopt a policy of free distribution with the student responsible for the consequences of any illegal inclusions *or* a policy of prior submission with the administrator empowered to prohibit distribution, but only when the materials contain forms of unprotected expression. (Traditionally, unprotected expression has been limited to obscene language, libelous statements, fighting words, advocacy of illegal actions likely to occur, and articles that result in substantial and material disruption of the school.)

Furthermore, local policy, in addition to clarifying the operative interpretation, may grant rights to students in addition to those rights originating in state and federal constitutions or statutes. Thus even in a jurisdiction where prior submission is deemed constitutional, the local policy could expand the freedom of the press right by not requiring prior submission, provided the expansion does not violate a countervailing constitutional or statutory principle. The converse, however, does not hold true. Constitutional or statutory rights cannot be narrowed by local policy.

REASONABLENESS

Regardless of legal authority and enforceability, no prohibition should be placed on students which is without a reasonable educational or public policy justification.

By way of illustration, one Michigan principal after viewing a series of 50 pictures at the behest of a federal judge concluded that only a handful of the individuals depicted would be allowed to attend his school given its current grooming standards. Those excluded were all but five Presidents of the United States; a number of preeminent statesmen and Supreme Court Justices; and Jesus Christ as popularly depicted. The Court questioned the reasonableness of any regulation that would prohibit such historical and contemporary figures from obtaining an education merely on account of the length of their hair. Thus, though the law in a number of jurisdictions concludes that student hair style is not a form of constitutionally protected symbolic expression (or privacy), many boards have rescinded grooming codes. Basically these boards have asked themselves two questions that should be considered before adopting any restrictive policy: (1) Is there a reasonable relationship between the rule and a valid educational objective? (between hair length and a nondisruptive environment and health and safety interests) and (2) Can the objective be reached by using a less offensive or stringent rule or alternative? (disciplining only those whose hair styles prove disruptive in fact, requiring the periodical washing of hair, or wearing a hair band while in woodworking class).

ORGANIZATION AND FORMAT

The policy should be organized in a format that aids understanding and allows easy and ready reference.

Because such policies are often incremental in origin with sections added overtime by different boards and administrators and because they frequently evolve from crises, they tend to be poorly organized and with little attention to format or consistency of organization. While there is of course no single means of organizing such policies, a few principles should be observed:

— Divide the Policy Into Major Divisions and Subdivisions

Such as Introduction, Purpose, or Preamble
Rules Governing Conduct
Procedures to be Followed in Disciplining Students
Student Rights
Legal Limitations on Rights
Grievance Procedures, etc.

— Select Particularly Descriptive Words for Various Divisional Headings
"Offenses Against Persons" rather than "Category I Offenses"
"Offenses Against Property" rather than "Category II Offenses"

— Enumerate Items in a Series Such as Available Alternatives, Elements of a Situation or Steps in a Process and Sequence Them in the Most Logical Order

Hearing Procedure

5. The following procedural guidelines will govern the hearing:
   a. Written notice of charges against a student shall be supplied to the student and his parent or guardian.
   b. Parent or guardian shall be present at the hearing.
   c. The student, parent or guardian may be represented by legal counsel.

d. The student shall be given an opportunity to give his version of the facts and their implications. He should be allowed to offer the testimony of other witnesses and other evidence.

e. The student shall be allowed to observe all evidence offered against him. In addition he shall be allowed to question any witness.

f. The hearing shall be conducted by an impartial hearing authority who shall make his determination solely upon the evidence presented at the hearing.

g. A record shall be kept of the hearing.

h. The hearing authority shall state within a reasonable time after the hearing his findings as to whether or not the student charged is guilty of the conduct charged and his decision, if any, as to disciplinary action.

i. The findings of the hearing authority shall be reduced to writing and sent to the student and his parent or guardian.

j. The student and his parent or guardian shall be made aware of their right to appeal the decision of the hearing authority to the appropriate appellate authority.

— Use Various Organizational Aids Such as Spatial Relationships, Capitalization, Underlining, Print Style or Size, Symbols and the Like to Differentiate Portions of the Policy, Establish Levels of Generalization and/or Importance, or Add Emphasis.

AIDS

Capitalization

RIGHTS
Freedom of Speech
definition
scope
limitation(s)

Spatial Relationship

RIGHTS
- Speech
  - definition
  - scope
  - limitation(s)

RIGHTS
- Speech
  - definition
  - scope
  - limitation(s)

Symbols

Alphabetic

RIGHTS
A. Speech
B. Association
C. etc.

Numeric

- 100 RIGHTS
  - 101 Speech
    - 101.1 definition
    - 101.2 scope
    - 101.3 limitation(s)
  - 102. Association
    - 102.1 definition
    - 102.2 scope
    - 102.3 limitation(s)

(100, 200, 300, etc.–primary division
01, 02, etc. secondary heading
01.1 tertiary heading, etc.)

Alpha-numeric

- I. RIGHTS
  - A. Speech
    - 1. definition
    - 2. scope
    - 3. limitations(s)
  - B. Association
    - 1. definition
    - 2. scope
    - 3. limitation(s)

Print

Type and/or size	*Color*
PREAMBLE	Preamble (black)
RIGHTS, RESPONSIBILITIES, AND LIMITATIONS	Rights, Responsibilities, and Limitations (red)
FREEDOM OF SPEECH AND ASSEMBLY	

— Utilize Columned or Diagramatic Representations to Promote Understanding of the Relationship of Provisions Within the Policy.

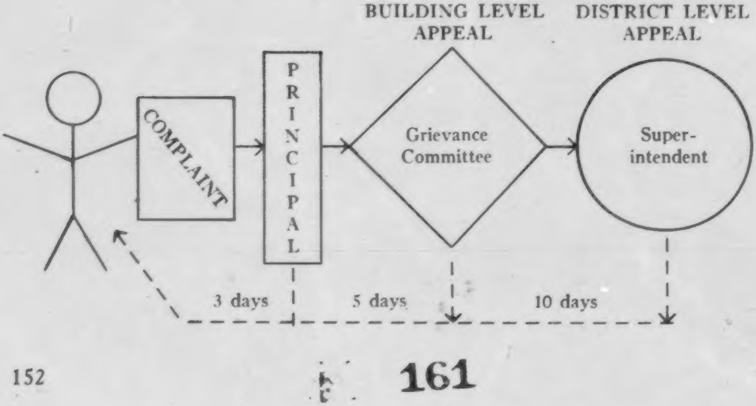
Columned Representation

Illegal Substances and Dangerous Drugs

Problem	*Policy*	*Disciplinary Action*
A. Smoking	Smoking is not permitted on school grounds. Tobacco is injurious to health. Fire hazard is substantial.	1. Suspension and required attendance at film about the health hazards of smoking. 2. Second violation: Suspension with parental conference for readmission. 3. Third violation: Three day suspension.
B. Drug and Chemical Abuse	The use of drugs is illegal and is a health hazard. Students may not appear at school under the influence of harmful drugs. The school will protect students from harmful drugs and chemicals and from those who sell or dispense harmful drugs or chemicals.	1. Possession: Suspension from day school—readmission after satisfactory conferences with family, and upon approval by probation officer. 2. Conviction: Students convicted of using or selling drugs must attend a series of eight evening classes on drug abuse. Any student convicted of selling will not be readmitted to day school for 60 days following sentence. Police may be consulted.

Diagrammatic Representation

Grievance Procedure



—INCLUDE A TABLE OF CONTENTS AND/OR INDEX TO ASSIST EASY REFERENCE.

CONTENTS

Preface
Introduction
Part I — Points of Law
  Free Education
  Conduct Off School Grounds
  Corporal Punishment
  Hair and Dress
  Freedom of Expression
  Locker Searches
  Police in the Schools
  Suspension and Expulsion
  School Rules
  Flag Salute and Pledge of Allegiance
  Cigarettes, Alcohol and Drugs
  School Records
  Appeals

ACCOUNTABILITY

The policy should expressly designate by position or selection criteria the person or group of persons responsible for various facets of implementing the policy and expressly establish definite time limits for the accomplishments of various activities.

Though it is impractical to restrict the authority to perform certain acts to the individual occupying a single position, at least some selection procedure or criteria (position, association, age, grade, sex, race), should be preestablished rather than simply stating "or designee" or "persons with expertise or interest." This is necessary to minimize assertions that the individual or group selected in a particular instance is biased, thereby contributing to students challenging authority, even when reasonably exercised.

The establishment of time lines for official action—such as between discovery of an offense and initiating disciplinary action, or between imposing a sanction and hearing an appeal—guards against coercive actions by either party, enhances the availability and quality of the evidence for the proceedings, minimizes the impact of a subsequently reversed determination, and generally promotes organizational efficiency and accountability.

DISSEMINATION AND EDUCATION

The policy should be distributed to all affected members of the school community prior to its implementation and should be the subject of annual classroom discussion and study as well as the focus of a comprehensive *in-service training program for teachers, building administrators and key central administrators.*

Publication of a policy may be enough in some instances to secure compliance, but another step may be necessary in many instances. Efforts to educate affected personnel as to why particular rules are needed or rights need to be respected may help reduce resentment on the part of students and staff respectively and contribute to a higher level of respect for applicable rules and rights. Because of the nature of assigned responsibilities, in addition to efforts to educate staff about the policy and changing status of the law, it may be necessary to provide training in fact finding, investigating complaints and incidents, determining appropriateness and weight of evidence, conducting informal and formal hearings, reviewing decisions of subordinate authority, and receiving and acting on student grievances. Similarly, students should be afforded correlative training experiences with the emphasis on how to use established policies and procedures effectively to protect their interests and accomplish the change they deem necessary.

DATA COLLECTION

The policy should require the regular collection and publication of data sufficient to allow an objective evaluation of the policy, how it is administered, and its effectiveness.

Because of the absence of hard data many school districts are forced to operate on unverified assumptions concerning student behavior patterns and are unable to refute even spurious allegations that a double standard operates depending on a student's race, sex or other characteristics. Districts develop policies and organizational structures without an assessment of their potential effectiveness and prescribe solutions based on intuition rather than fact.

An information system should be instituted which affords an analytical framework for decision-making, policy evaluation and development, and diagnostic and prescriptive uses.

Data identifying the frequency and nature of misbehavior without ascertaining the causes are not enough. The information system should be designed so as to insure individual rights of teachers and students, yet answer at least the following questions:

1. What are the effects of environmental factors on discipline problems? (size of building, utilization level, location, organization, etc.).
2. What are the most prevalent discipline problems or offenses and in what major category of offenses do they fall? (e.g., bodily harm, property damage, attendance-related, etc.).
3. What relationships, if any, exist between the various categories of offenses and the demographic characteristics of the students?

4. When do various problems/offenses most frequently occur? (year, month, day of week, hour of day).
5. Where do various problems/offenses most often take place? (coming to or going from school, on school grounds, in building, where in building).
6. What type of teacher or administrator has the greatest incident of various categories of discipline problems/offenses (age, sex, race, degree, experience, grade, subject matter, attitude).
7. What type of administrator applies which disciplinary sanctions for various categories of problems/offenses involving what types of students? (administrator—age, sex, race, degree, experience, grade, position, etc.).
8. What disciplinary sanctions prove most effective for various types of students and for various categories of problems/offenses?

The information should be aggregated by school (or district if necessary to insure anonymity) and made available to the public at least semiannualy.

(Contact The Program for Educational Opportunity for details of its comprehensive Discipline and Displacement Information System.)

POLICY MODIFICATION AND REVIEW

Procedures should be incorporated in the policy whereby (1) students may petition at any time for the modification of a provision or its temporary suspension, (2) members of the school community may periodically submit suggested changes, (3) the board must at least biannually conduct a comprehensive review.

Particularly where students do not play a decisive role in formulating the policy, they must be afforded an avenue of input such as an initiative procedure. A mechanism should also be provided allowing for the temporary suspension of a rule in the event its application in a particular situation would be unjust.

Because of the need for periodic school-community input, yet the substantial time and energy involved in convening a representative committee and rewriting an entire policy, a procedure should be incorporated to encourage the submission of proposed amendments or modifications. The procedure should also provide for the circulation of the amendments to other interested parties prior to any formal action.

Finally, a comprehensive and systematic review of the entire policy is necessary at least every two years to insure continued consistency with other district policies and to modify the policy to coincide with developments in the law.

*Checklist of Considerations for Developing and Evaluating School Policies Governing Students**

I. Procedural Considerations
  A. Right to an impartial hearing
  B. Notice of charges, offense, rule violated, and adverse evidence
  C. Right to counsel
  D. Right to confront and question accusers
  E. Privilege against self-incrimination
  F. Right to appeal

II. Substantive Considerations
  A. Educational opportunities free from arbitrary and unreasonable rules
  B. Freedom from vague, uncertain, and overbroad rules
  C. Freedom from unequal application of school policies
  D. Freedom of expression
    1. Expression by speech
    2. Expression by writing
    3. Symbolic expression
      a. Expression through hair styles
      b. Expression through dress
      c. Expression through buttons, badges, etc.
      d. Expression through action
        i. Expression through participation and non-participation in ceremonies
        ii. Picketing
        iii. Demonstrations
  E. Freedom of assembly and association
  F. Search and seizure
  G. Freedom from unreasonable punishment
  H. Freedom from discriminatory classifications
  I. Access to school records
    1. Information about your school
    2. Access to student records/degree of confidentiality required
  J. Law enforcement activities in the school
    1. Arrests
    2. Freedom from interrogation

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* The above is intended as a checklist of considerations only. Current legal authority or parameters should not be inferred from the language used ("Right," "Opportunity," "Freedom," or "Privilege").

STUDENT RIGHTS AND RESPONSIBILITIES AND THE CURRICULUM

JOEL F. HENNING

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Like blind men feeling different parts of the elephant, each of us perceives subject matter differently. The subject of this conference, "Student Behavior, Rights and Responsibilities, and the Fair Administration of Discipline," is no exception. Administrators may see the problems of student behavior as a threat to order and efficiency, and a waste of time better spent on their more interesting and important professional responsibilities. Teachers may consider the problem as one which compels them to act as policemen at the cost of their attention to teaching. Students may believe themselves victims of oppression and devote hemselves to testing the limits upon their behavior. Many parents probably view the problem as another symptom of a decadent school system which costs more and more money and provides less and less education. Growing numbers of my colleagues in the legal profession no doubt welcome the controversy over student behavior, because it is generating fee-paying clients on all sides, taking up some of the slack caused by the trend toward alternatives to litigation in the personal injury and divorce fields.

Too many of those concerned about the issue of student behavior overlook the extraordinary *educational opportunity it presents*. The issues related to student behavior are issues of fundamental importance to society. They include law, order, authority, due process and democracy. They involve relationships among people, and between individuals and the state. Problems of student behavior could be the vehicle for effective civic education.

Recently, Professor R. Freeman Butts of Columbia Teachers College wrote that:

> The prime purpose of the public schools is to cultivate the political virtues that are appropriate to constitutional self-government and that are required to achieve a just society which stands for justice, equality, and freedom in the modern world.[1]

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[1] R. Freeman Butts, "The Public Purpose of the Public School," *Teachers College Record*, vol. 75, no. 2, p. 220, December, 1973.

The same sentiment was expressed in 1790 by James Wilson, a scholar who had previously signed both the Declaration of Independence and the Constitution, and served as a Justice of the United States Supreme Court. Wilson said that:

> Every free citizen and every free man has duties to perform and rights to claim. Unless, in some measure, and in some degree, he knows those duties and those rights, he can never act a just and an independent part.[2]

The problem is that this sentiment is more easily expressed than translated into effective education. Almost all educators agree that the traditional civics courses have been narrow, lifeless failures. These courses attempted to transmit values and ideals uncritically to students who were expected to accept them passively, as they were later expected to accept the values transmitted via television. These "adult" values concern the sensual and psychic rewards of smoking various brands of cigarettes, the magical effects on the marriage relationship that a bride can achieve by purchasing the correct brand of coffee, the compelling need to fight communism in Vietnam, and the simultaneous virtue in sending our President off to gala and cordial banquets with the maximum leaders of communism.

Our civics books have changed, but it may be a rhetorical rather than a pedagogical transformation. "Progress," for example, may no longer be one of the ideals dogmatically transmitted. "Ecology" may have replaced it—however briefly. Now, I suppose, the textbook publishers are once again re-plating, looking for the catch-phrase that will accommodate the current energy crisis while maintaining some wisp of reverence for environmental protection.

The issue of student behavior provides a dramatic example of the continuing separation of civic education from meaningful civic experience. In 1973, many publications were issued which discussed the problem of student behavior. Let us examine two which differ significantly from one another, yet share a blindness to the potential relationship between the regulation of student behavior and education itself. The first is a pamphlet published by the National School Public Relations Association entitled "Discipline Crisis in the Schools: The Problems, Causes and Search for Solutions."[3] The pamphlet is not shy about recommending solutions to the problem of disorder in the schools. It devotes an entire chapter to the use of drugs "to treat hyperactive youngsters" and another to corporal punishment. Not a paragraph, however, is allotted to how students can perhaps be made more responsible in matters of behavior through a curriculum which confronts problems of behavior and authority. In the fourteen item checklist for teachers "to affect positive discipline in the classroom," not even one item suggests that classroom time might usefully be spent by having students share in the search for answers to the problems of discipline. Indeed, the opposite is recommended. "A teacher should avoid arguing with students."[4] Socrates, where are you now that we need you?

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[2] James Wilson, "Of the Study of the Law in the United States," in McCloskey, ed., *The Works of James Wilson*, vol. I. (Cambridge: Harvard 1967) p. 72.

[3] (Arlington, Va. 1973).

That pamphlet, it could be argued, was not concerned with education but only with the narrow problem of discipline. *The Reform of Secondary Education,* however, is a book published by the National Commission on the Reform of Secondary Education, which devotes an entire section to "Revitalizing the Content of Secondary Education." It also contains chapters on "The Crisis in School Security" and "Student Rights and Obligations."[5] In addition, the enlightened and progressive commissioners recognize that "a stimulating, multi-dimensioned culture is educative," and also that "action-learning programs must be accepted as a source of learning experiences."[6] But in dealing with school security, student rights and obligations, the book provides no hint of a linkage between these problems and the learning process.

These recent publications support the earlier findings of Seymour Sarason of Yale that "in practice the most frequent way in which children are expected to learn individual responsibility and social reciprocity is by *not* being exposed to such experiences."[7] Sarason's study focused on the issue of student behavior:

> I have asked teachers: is there something about children that makes them completely unable to participate in discussion and formulation of crime and punishment in the classroom? . . . The second question: assuming that they are incapable, is it also true that they do not think about or are not concerned about crime and punishment in the classroom? To say they are completely unable is at least unjustified and at worst sheer ignorance of what children do outside of school in their spontaneous play groups. One does not need the support of formal research to assert that children in their relationship to each other have some concepts of fairness—one needs only good eyes and ears.
>
> The fact of the matter is that the great bulk of teachers assert (1) that children are not completely unable and (2) that children do think about crime and punishment in the classroom. Whatever thinking allows teachers to make these positive assertions is not reflected in what they do.[8]

Sarason understands the consequences of isolating student problems from the classroom:

> The teachers thought about children in precisely the same way that teachers say that school administrators think about teachers, that is, administrators do not discuss matters with teachers, they do not act as if the opinions of teachers were important, they treat teachers like a

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[4] Id. pp. 54–5.

[5] (New York: McGraw-Hill 1973).

[6] Id. pp. 77, 79.

[7] Seymour B. Sarason, *The Culture of the School and the Problem of Change,* (Boston: Allyn & Bacon 1971) p. 236.

[8] Id. pp. 189–90.

> bunch of children, and so on. The rise and militancy of teacher organizations have a complex history, but one of the important factors was the unwillingness of teachers to be governed by a tradition in which they had no part in decisions and plans that affected them. We are witnessing the same development on the part of students in our high schools, junior high schools, and needless to *say, in our colleges . . . It is recognized* that what is at issue is what life in a school is and could be."[9]

"And so," as Kurt Vonnegut would say, "it goes." Teachers too often teach abstractions and unreality even though the school is literally overflowing with many of the same very real and desperate problems afflicting our society in general. The schools tend to isolate young people from responsibility for their own development.

Even though there is general support for the proposition that schools must help students develop a responsible concern for an orderly and just society, it appears that students are not being encouraged to take an active part in bringing order and justice to the society of the school. The movemen for student rights and obligations on the one hand, and the movement for a more relevant civic curriculum on the other, are proceeding in parallel rather than intersecting lines. According to the great educational psychologist and philosopher, John Dewey, both movements are thus doomed to fail. In his book, *Experience and Education,* he said that effective social control depends upon those involved feeling that they are a part of a group: "It is not the will or desire of any person which establishes order but the moving spirit of the whole group."[10] The traditional school on the other hand,

> was not a group or community held together by participation in common activities. Consequently, the normal, proper conditions of control were lacking. Their absence was made up for, and to a considerable extent had to be made up for, by the direct intervention of the teacher, who, as the saying went "kept order." He kept it because order was in the teacher's keeping, instead of residing in the shared work being done.[11]

In a Deweyite school, "social control resides in the very nature of the work being done as a social enterprise in which all individuals have an opportunity to contribute and to which all feel a responsibility."[12] Where discipline (even reasonably fair discipline) is *imposed* on students from above, according to Dewey, "The gap is so great that . . . the methods of learning are foreign to the existing capacities of the young. They are beyond the reach of the experience the young learners already possess."[13]

Thus far, I have attempted to suggest two things. First, any relevant curriculum in civic education must incorporate the problems of student behavior (as well as other real problems of the schools, such as teacher and administrator rights and obligations). "Relevant," after all, means related to some valued activity or goal. Second, the problem of student behavior will itself be mitigated by sharing responsibility for its solution with students.

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[9] Id. p. 177.

[10] (New York: Collier 1963) p. 54.

[11] Id. p. 55.

[12] Id. p. 56.

[13] Id. p. 19.

A growing number of scholars, led by Lawrence Kohlberg of Harvard, believe that a third benefit will result from teaching about moral and legal problems, including those of school governance. Kohlberg has built on Piaget a theory of moral development in which there are six stages, ranging from rule observance because of fear of punishment at the lowest level, to a utilitarian regard for rules at an intermediate stage, and ultimately to a subtle regard for the relationship between basic human values and justice. According to Kohlberg, a curriculum which incorporates moral and legal issues such as those concerning student behavior and due process in discipline will, if properly taught, stimulate children to higher levels of moral development than they might otherwise have achieved. When confronted by a school principal who said, "What are you doing all this verbal moral discussion for when we need your help with moral behavior problems of pregnancy, drugs and theft," Kohlberg responded:

> "To develop moral action we would want the students to express their sense of justice as well as talk about it and make the school more just."[14]

That principal, incidentally, did not explore Kohlberg's curriculum proposal further.

It is important to distinguish between student involvement and participation in matters involving student rights and obligations, which I am urging, and the surrender of all authority over problems of order and punishment to students, which is patently absurd. A school is not a small-scale Jeffersonian democracy. A school is created to accomplish a specific set of objectives. Many different constituencies are involved in the school; each has different responsibilities and each has different experiences to bring to the school environment. Qualified adults are placed in positions of leadership in the schools because they are equipped to lead. Dewey recognized that his theories had tended to mislead some into believing that progressive education required abdication of adult authority:

> The mature person, to put it in moral terms, has no right to withhold from the young on given occasions whatever capacity for sympathetic understanding his own experience has given him . . . As the most mature member of the group he has a peculiar responsibility for the conduct of the interactions and intercommunications which are the very life of the group as a community.[15]

In his useful and important analysis of the free school movement, Allen Graubard rejects the naive view of radical free school advocates who condemn authority and structure. "The self-congratulatory rhetoric," of free school staff, Graubard says, "helps to prevent confrontation with the deep problems of young people."[16] Teachers and administrators are (or should be) wiser and fairer than students. They are thus entitled to a larger role in handling problems of behavior, as well as in choosing and guiding curriculum. However, it is irrational to deal with behavior problems of high school seniors in the same manner as first graders. Growth in intellectual skills is or can be matched by growth in the capacities to act responsibly and morally as part of the school community. Eighteen-year-olds can now fully participate in federal elections. It seems hypocritical for educators not to match the confidence placed in adolescents by the Congress and President, by giving them a voice in matters of school governance equal to that which they have in national politics.

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[14] Lawrence Kohlberg, "Moral Development and the New Social Studies," *Social Education*, vol. 37, no. 5, p. 375, May, 1973.

[15] Dewey, *Experience and Education*, pp. 38, 58.

Thus far I have discussed the integration of student behavior into the curriculum in abstract terms. Without concrete examples of how it can be done, this essay is worth no more than the abstract and unrealistic civics curriculum which I have criticized. Let us therefore look at two actual cases involving student behavior. These cases reached the courts and were decided by judges, not by students, teachers and administrators. Thus they reflect the failure of the educational community to resolve its own controversies, fairly and rationally. As Professor Butts wrote, the fact that these matters were not successfully handled within the school indicates the courts

> "have been more faithful to the basic meaning of public education than have the profession, the critics, the reformers and the local or state boards of education."[17]

Nevertheless, they provide an outsider like myself with a ready source of actual problems concerning student behavior, even though the teacher need go no further than the four walls of his or her classroom for appropriate curriculum material.

1. *Tinker v. Des Moines Independent Community School District.*[18] A group of Des Moines high school students wore black armbands to school in violation of a policy adopted by the principals. Pursuant to this policy, the students were asked to remove the armbands, and were suspended for failure to do so. A good discussion of this case would inquire into whether the students' action caused a disturbance that disrupted the school; and whether such action was likely to cause a disruption; and whether such action should be protected by the First Amendment to the Constitution; and whether it would have been more appropriate to forbid the wearing of all symbols, including religious ones; and whether the age and grade level of the students should make a difference in the result; and whether this is the kind of policy that should have been put to a

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[16] Allen Graubard, *Free the Children*, (New York: Pantheon 1972) p. 174.

[17] R. Freeman Butts, "The Public Purpose of the Public School," p. 24.

[18] 393 U.S. 503 (1969).

democratic vote; and so on. Such a discussion will not result in unanimous agreement on any one of these questions, nor should it. Justice is a complex problem, in the classroom as it is in the larger world. There are no simple, correct answers. Students and educators will find that their own moral and legal presumptions are constantly challenged and upset by such a curriculum. Hopefully, each class can deal similarly with its *own* problems, as well as cases that were resolved in the courts.

2. *Merriken v. Cressman.*[19] An eighth grader and his mother protested against establishments of a program to identify drug abusers and remedy their problems, claiming that it violated constitutionally protected rights of privacy. In such a case a class might ask what privacy ought an eighth grader be guaranteed in school; and whether the consent of parents to such a program should suffice; and whether the means to be used, rather than the ends sought to be achieved, ought to be revised; and whether school authorities or alternative agencies should be responsible for the control of drug abuse; and so on. My own experience in classrooms and workshops for educators indicates that such matters will find both students and educators in substantial conflict over what is the best way to solve such problems.

Some educators will argue that issues of student behavior are too controversial for the classroom. If, however, education is preparation for life, this argument cannot prevail. Justice Oliver Wendell Holmes said that the Constitution "is made for people of fundamentally differing views."[20] Conflict resolution is the essence of our legal system. We cannot urge law and order on students on the one hand, and attempt to insulate them from participation in the resolution of controversies involving their own life. As John Holt wrote:

> I am saying that society is the school; that men learn best and most from what is closest to the center of their lives; that men being above all else looking, acting, thinking, choosing and acting animals, what men need above all else is a society in which they are to the greatest possible degree free and encouraged to look, ask, think, choose, and act; and that making this society is both the chief social or political and educational task of our time.[21]

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[19] 364 F. Supp 913 (E.D. Pa. 1973).

[20] *Lochner v. New York,* 198 U.S. 45, 76 (1905).

[21] Quoted in Graubard, *Free the Children,* p. 267.

RIGHTS AND RESPONSIBILITIES WORKSHOP FOR STUDENTS

DEVELOPED BY JUNIOUS WILLIAMS AND CHARLES B. VERGON

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I. INTRODUCTION

General Objective:

The primary objective of The Rights and Responsibilities Workshop for Students is to educate students about their rights and responsibilities in school so that they might make more intelligent responses to problems they encounter. Additionally the workshop serves another, and possibly more important, function by serving as an internalization or reinforcement mechanism for information students have acquired through classes such as Civics, Government, Social Studies, etc. Throughout the workshop, students are made aware of how important principles of American Constitutional law apply to them collectively and individually as students.

Specific Objectives:

1. To increase communication between students.
2. To increase student awareness of schools.
3. To provide students with experiences in small group problem solving.
4. To make students aware of their rights and responsibilities.
5. To give students an exposure to non-disruptive methods of problem solving.

Workshop Model:

The workshop consists of eight modules plus an introductory and an evaluative session. The modular design allows each district flexibility to adapt the workshop to the time and topical needs of the specific district or building. The complete workshop requires thirteen and one-half hours. The workshop may be adapted to either a one or two day program. We are hopeful that district requesting the problem will be interested in the complete workshop, but we are cognizant of the possible time restraints.

Planning and Implementation Procedure:

1. Agency contacts Program for Educational Opportunity to express interest in workshop.
2. Agency and PEO arrange date and time for planning session. (It is advantageous if administration, faculty, and students are represented at planning session.)
3. Planning session is held, at which time the PEO staff presents detailed information on workshop program. In addition, the following specifics are determined:
   a. length of workshop
   b. date(s) of workshop
   c. selection process for student participants
   d. specific program emphasis desired by local district
   e. materials needed by PEO staff from local district, and
   f. location
4. PEO maintains contact with local district to insure finalization of planning determinations.
5. Implementation of Workshop.
6. PEO follow-up with local district, i.e., evaluative information and test data.

II. WORKSHOP OVERVIEW

Opening Session

Purpose: To inform students of the general objectives of the workshop; to administer pre-test; to acquaint students with coordinators.

Module I—Organizational Structure of Education

Purpose: This section is designed to familiarize students with the scope of education on the three basic governmental levels. Many students perceive education as involving only the local school district and do not recognize the function of the federal and state governments in the process. Through the identification of agencies and individuals at various levels, students gain not only an awareness of the massive structure of education but also an indication of the human and monetary resources allocated to education.

Module II—Institutional Role of Schools

Purpose: This segment is designed to initiate student exploration of the role of schools. The activities will focus on discussing *three* basic questions:

1) Why are there schools?
2) What do schools accomplish?
3) What is the relationship between schools and the society?

Through the examination of these questions, it is hoped that students will begin to understand the role of schools in relation to other institutions and societal activities.

Module III—The Courts and Their Relationship to the Schools

Purpose: This segment is designed to acquaint the student with the structure and function of the state and federal court systems and their impact on educational policy. More specifically, the session will focus on:

1) What is law?
2) What is the role of courts in society?
3) How do courts affect educational policy?
4) How is the court system organized?
5) What is the significance of legal principles such as "jurisdiction," "precedent," and "supremacy" on student rights and responsibilities?

Module IV—What are Student Rights and Responsibilities

Purpose: This segment is designed to familiarize students with statutory and judicial authority affecting pupil conduct in and way from school. The activities will focus on a survey of Federal and State laws applicable to students and the use of resource materials. Students will also be introduced to the concept of "rights and correlative responsibilities" and the necessity of balance between the two.

Module V—Local Policies and Rules

Purpose: To familiarize students with the concept of local autonomy in rule-making and to acquaint them with resultant documents (i.e., board policies, discipline code, teacher contract).

Module VI—The Role of Advocacy

Purpose: To introduce students to the concept of advocacy and some of the important skills necessary for an advocate. Advocacy will be presented to students as a method for initiating positive and non-disruptive change in their schools.

Module VII—Resources for Students

Purpose: To acquaint students with individuals, agencies, and departments both inside and outside of the school system that can assist them with problems.

Module VII—Using Advocacy in School

Purpose: To give students a practical experience in integrating and utilizing their knowledge of structure, law, policy and advocacy in a school-related situation.

Evaluative Session

Purpose: To give students an opportunity to critique the experience they have had both verbally and through a written evaluation form. Additionally coordinator will administer a short posttest to measure student knowledge.

III. DETAILED DESCRIPTION OF TRAINING MODULES

Purpose, methodology, materials, timetable

Opening Session

Purpose: To inform students of the general purposes of the Student Rights and Responsibilities Workshop; to administer pretest; to acquaint participants with coordinators.

Methodology:

STEP A—coordinator(s) will explain purposes and objectives of program and answer questions.

STEP B—coordinators will administer pretest.

STEP C—students will be introduced to coordinators and given an opportunity to informally interact.

Materials: Program objective sheet; pretest; name tags.

Timetable: Step A—15 minutes
Step B—15 minutes
Step C—15–30 minutes
TOTAL maximum 1 hour

MODULE I—ORGANIZATIONAL STRUCTURE OF EDUCATION

Purpose: This section is designed to familiarize students with the scope of education on the three basic governmental levels. Many students perceive education as involving only the local school district and do not recognize the function of the federal and state government in the process. Through the identification of agencies and individuals at various levels, students gain not only an awareness of the massive structure of education but also an indication of the human and monetary resources allocated to education.

Methodology: The students will begin this module with a small group exercise. Each group (6–8 per group) will be given the task of identifying departments, agencies, organizations, boards, and individuals who participate in the educational process on the national, state, and local levels. The groups will be given fifteen (15) minutes to list all such participants. After the individual groups have met, the entire workshop will re-convene and a representative from each group will present his/her group's findings. After each group has made its presentation, a master list will be presented and roles explained.

Materials: Magic markers; large sheets of newsprint; organizational charts from office of education; state department of education, and local school district; overall organizational chart.

Timetable:	explanation	— 10 minutes
	breakdown into small groups	— 5 minutes
	group activity	— 15 minutes
	group presentation	— 20 minutes
	co-ordinator's summary	— 10 minutes
	TOTAL TIME	— 60 minutes

MODULE II—INSTITUTIONAL ROLE OF SCHOOLS

Purpose: This segment is designed to initiate student exploration of the role of schools. The activities will focus on discussing *three* basic questions:

1) Why are there schools?
2) What do schools accomplish?
3) What is the relationship between schools and the society?

Through the examination of these questions, it is hoped that students will begin to understand the role of schools in relation to other institutions and societal activities.

Methodology: Students will be divided into small groups (6–8 per group). Each group will be given the task of answering the following questions:

1) Why are there schools?
   A) Who do they benefit?
   B) Who do they harm?

2) What do schools accomplish?
  A) Who does the accomplishment benefit?
  B) Who does the accomplishment harm?
3) What are roles?

Each group will record their answers on newsprint. The coordinator will post them when the mass workshop reconvenes. The coordinator will then discuss roles through an examination of the small group response sheets and generalize specific functions into broader roles.
See Example 1 for instructions.

Materials: magic markers; newsprint; question-explanation sheet; chalk board.

Timetable: explanation — 10 minutes
breakdown into small groups — 5 minutes
small group activity — 20 minutes
explanation of roles — 10 minutes
discussion of roles — 15 minutes
TOTAL TIME — 60 minutes

MODULE III—THE COURTS AND THEIR RELATIONSHIP TO THE SCHOOLS

Purpose: This segment is designed to acquaint the student with the structure and function of the state and federal court systems and their impact on educational policy. More specifically, the session will focus on:

1. What is law?
2. What is the role of courts in society?
3. How do courts affect educational policy?
4. How is the court system organized?
5. What is the significance of legal principles such as "jurisdiction," "precedent," and "supremacy" on student rights and responsibilities.

Methodology:

STEP A—The coordinator will introduce the students to the objectives of this session and give a hypothetical fact situation along with a judicial opinion to read.

STEP B—The students will be divided into small groups (6–8) and asked to consider the hypothetical situation and opinion while answering questions 1–3 above.

STEP 4—The students will report their Step B conclusions and be introduced to information regarding questions 4 and 5 by the coordinator.

Materials: Question-explanation sheet; newsprint; magic markers; hypothetical fact sheet; judicial opinion governing hypothetical situation; organization chart for federal and state court systems; jurisdictional maps; glossary of legal definitions.

Timetable:	explanation of session objectives	— 3 minutes
	reading of hypothetical judicial opinion	— 12 minutes
	breakdown into small groups	— 5 minutes
	small group activity	— 30 minutes
	reporting back and introduction of new information	— 25 minutes
	TOTAL TIME	— 75 minutes

MODULE IV—WHAT ARE STUDENT RIGHTS AND RESPONSIBILITIES?

Purpose: This segment is designed to familiarize students with statutory and judicial authority affecting pupil conduct in and away from school. The activities will focus on a survey of Federal and State laws applicable to students and the use of resource materials. Students will also be introduced to the concept of "rights and correlative responsibilities" and the necessity of balance between the two.

Methodology:

STEP A—An introduction to the area of student rights and responsibilities will be conducted by the coordinator.

STEP B—Students will be given an overview of *The Rights and Responsibilities: A Handbook for Michigan Students*. Students will be given ample time for questions.

STEP C—Students will be divided into small groups (6–8 per group). Each group will be given a hypothetical problem involving one or more areas discussed in the overview (Step B). The small group task will be to determine what actions taken by the characters in the hypothetical situation were inappropriate in terms of violating rights and/or responsibilities. The small groups will utilize the *Rights and Responsibilities Handbook* as a resource for solving the problem.

Each group will be assigned a different hypothetical situation (see Example 2). The group will choose a representative(s) to be responsible for explaining the group's hypothetical situation and which actions were inappropriate to the mass workshop.

Materials: "The Rights and Responsibilities: A Handbook for Michigan Students"; hypothetical situation sheets; selected sections of the Michigan State School Code.

Timetable:	introduction to students rights and responsibilities	— 20 minutes
	handbook overview	— 60 minutes
	explanation of exercise	— 10 minutes
	breakdown into small groups	— 5 minutes
	small group activity	— 20 minutes
	small group presentation	— 25 minutes
	coordinator's summary	— 10 minutes
	TOTAL TIME	2 hours — 30 minutes

MODULE V—LOCAL POLICIES AND RULES

Purpose: To familiarize students with the concept of local autonomy in rule-making and to acquaint them with resultant documents (i.e., board policies, discipline code, teacher contract).

Methodology:

STEP A—Coordinator will explain the local policy structure and decision making process. The session will include a general discussion of the local board's statutory authority for rule-making and a specific discussion of its (the board's) authority to make rules in the area of student conduct.

STEP B—The coordinator will conduct a discussion and explain the specific of the local discipline policy and how it is developed and reviewed.

STEP C—Students will be divided into small groups and assigned a section of the discipline policy to rewrite. Each group will be responsible for making changes that are understandable, workable, and legal. Additionally each group will be responsible for explaining why they felt the changes were necessary and how the new policy differs from the old.

Materials: District policy; discipline code; teacher contract; newsprint; magic markers; selected sections from Michigan School Code.

Timetable: Step A—15 minutes
Step B—45 minutes
Step C—60 minutes
TOTAL 2 hours

MODULE VI—THE ROLE OF ADVOCACY

Purpose: To introduce students to the concept of advocacy and some of the important skills necessary for an advocate. Advocacy will be presented to students as a method for initiating positive and non-disruptive change in their schools.

Methodology:

STEP A—coordinator will lead students in a discussion of "Advocate" and "advocacy" by placing the two terms on the board and asking students to define advocacy and identify persons in society who could be labeled advocates. After students have identified actual and potential advocates, the coordinator will ask students to suggest skills that are important to advocates.

STEP B—utilizing the skills listed by the students, coordinator will suggest three exercises that relate to those skills. The first is a repetition exercise that illustrates the importance of listening (see Example 2). The second exercise concentrates upon the importance of getting facts or inquiry (see Example 4). The third exercise is a roleplay whereby students must act in the role of an administrator faced with discipline problems (see Example 5).

STEP C—coordinator will summarize skills and uses of advocacy.

Materials: Chalk board or newsprint and magic markers; exercise sheets for "Step B."

Timetable: Step A — 15 minutes
Step B
exercise 1 — 15 minutes
exercise 2 — 20 minutes
exercise 3 — 30 minutes
Step C — 15 minutes
TOTAL TIME — 1 hour 35 minutes

MODULE VII—RESOURCES FOR STUDENTS

Purpose: To acquaint students with individuals, agencies, and departments both inside and outside of the school system that can assist them with problems.

Methodology: Students will be divided into small groups (6–8 per group). Each group will be given a hypothetical problem wherein the student requires assistance. Students will be asked to identify all individuals and agencies, inside and outside of the school, who might be able to assist the student and how. The small groups will be responsible for presenting their problem and conclusions to the mass workshop when it reconvenes. At the mass meeting, students and coordinator will discuss any additional resources that might assist the student. Each student will be given a master resource sheet.

Materials: Problem sheets; newsprint and markers; resource listing.

Timetable:	explanation	— 10 minutes
	small group activity	— 20 minutes
	small group presentation	— 30 minutes
	TOTAL TIME	— 60 minutes

MODULE VIII—USING ADVOCACY IN SCHOOL

Purpose: To give students a practical experience in integrating and utilizing their knowledge of structure, law, policy and advocacy in a school-related situation.

Methodology:

STEP A—Students will be given an orientation to the "Problem Analysis Sheet" by the coordinator (see Example 6).

STEP B—Students will divide into small groups (6–8 per group). Each group will be given a detailed hypothetical problem. The group will be responsible for preparing the problem for an audience with an administrator. Each group must make decisions as to strategy, resolving conflicts of law, and who will make the presentation to the principal. After students have prepared in small groups, they will make their presentation through a role-play with coordinator(s) as if they were in the administrator's office. After each group presentation, students and coordinators will discuss the groups strategies, and what they might have done differently (see Example 7).

Materials: "Problem Analysis Sheets"; Hypothetical Sheets; Handbooks, discipline codes, selected sections of Michigan School Code.

Timetable:	Step A	— 15 minutes
	Step B	
	explanation	— 10 minutes
	small group activity	— 60 minutes
	small group presentation	— 85 minutes
	summary	— 10 minutes
	TOTAL TIME	— 3 hours

EVALUATIVE SESSION

Purpose: To give students an opportunity to critique the experience they have had both verbally and through a written evaluation form. Additionally, coordinator will administer a short post-test to measure student knowledge.

Methodology:

STEP A—coordinator will administer post-test to measure student understanding of material covered.

STEP C—students will complete written evaluation forms.

Timetable: Step A—15-30 minutes
Step B—15 minutes
Step C—15 minutes
TOTAL maximum 1 hour

ILLUSTRATIVE MATERIALS FOR MODULE EXERCISES

The following materials are hypothetical situations that have been utilized in previous workshops. They are included primarily for illustrative purposes. During planning sessions prior to a workshop, problem areas in a particular district can be discussed and hypotheticals can be developed to highlight those problem areas.

EXAMPLE 1

MODULE II—SMALL GROUP INSTRUCTIONS

1) Each group should select a secretary (does not have to be a woman) to record the group's answers.
2) The group should discuss and answer the following questions in as much detail as possible:
    1) Why are there schools?
        A) Who do they benefit?
        B) Who do they harm?
    2) What do schools accomplish?
        A) Who do the accomplishments benefit?
        B) Who do the accomplishments harm?
    3) What are roles?

In answering these questions try to think about as many different parts of society as you can. You might want to use the following model.

1) Start by thinking about yourselves and answer the questions as they relate to you.
2) Then think about your family.
3) Think about your friends.
4) Think about the people in your school.
5) Think about people in your town.
6) Think about people in your state.
7) Think of some yourselves.

EXAMPLE 2a

MODULE IV—SEARCH AND SEIZURE AND FREEDOM OF PRESS

A's brother, who lives in Ann Arbor, has sent her a subscription to a radical, underground newspaper. Many of the recent issues have dealt with the problems of high school school students. A has taken these issues to school to show her friends. B, who is in A's English class, placed the paper inside his book and was reading it in class. The teacher walked past B, saw the paper and grabbed it. The teacher asked B where he got it and B pointed the finger of blame to A. The teacher glanced through the paper then gave it to A and told her to put it away.

After class, A is called to the principal's office and asked to produce the paper. A says she has put it away. The principal asks to see A's notebook and looks through it. When he doesn't find the paper, he says, "Let's go down and look in your locker."

A accompanies the principal to her locker but refuses to open it. Whereupon the principal produces a key, opens the locker, and takes the paper and tears it up.

1. Did A do anything wrong?
2. Did B do anything wrong?
3. Did the teacher do anything wrong?
4. Did the principal do anything wrong?

EXAMPLE 2b

MODULE IV—RECORDS AND COMPULSORY EDUCATION

A is a 15-year old freshman at Central High. His parents both work the day shift at the plant and leave for work at 6:30 a.m. Although they get A up before they leave he goes back to bed as soon as his parents step out the door.

A usually gets up about nine-o'clock and wanders to school for a few hours and leaves. The counselor has talked to A several times about his absences, but has never talked to his parents.

After A has missed 20 days of school, the school files a truancy petition with the juvenile court to have A declared a truant. The school sends all of A's records to the court. When A's hearing comes up, the judge fines A's parents $75.00 and sends them to jail for 90 days. A is taken into the custody of the court and placed in a foster home until his parents get out of jail.

1. Did A do anything wrong?
2. Did the school do anything wrong?
3. Did the judge do anything wrong?

EXAMPLE 2c

MODULE IV—SUSPENSION AND POLICE IN SCHOOLS

Students A and B are in the bathroom during a break at school and decide to smoke a cigarette. While they are smoking, a teacher walks in and A and B throw their cigarettes into the toilet. The teacher says, "Alright you two, go to the office."

When they get to the office, the teacher tells the principal that A and B were smoking dope. The principal says, "You both are suspended for the rest of the year. I want you to wait here until I get the police."

When the police get there, they ask A and B where they got the dope and they are under arrest unless they tell. A and B say they don't have the dope. The police say "You're under arrest." A and B are taken to the police station and booked for possession of dope.

1. Did A and B do anything wrong?
2. Did the principal do anything wrong?
3. Did the police to anything wrong?
4. What should the principal and police have done?

EXAMPLE 2d

MODULE IV—EXPULSION AND CORPORAL PUNISHMENT

Student A gets in a fight with Student B. A pulls a knife on B. The teacher comes along and tells A to give him the knife. A refuses and continues to stab at B. The teacher grabs A and tries to pull the knife from A. When this fails, the teacher starts punching A in the face and A finally drops the knife. A is taken to the office and the principal tells A that he is suspended and will have to go in front of the board for possible expulsion.

A waits at home for three weeks without hearing from the school. Then A's parents get a letter saying that the board held a hearing and expelled A forever from the Pontiac Schools.

1. Did A do anything wrong?
2. Did the teacher do anything wrong?
3. Did the School Board do anything wrong?
4. Did the principal do anything wrong?

EXAMPLE 2e

MODULE IV—FREEDOM OF PRESS

A, B and C have written a letter about how badly the principal runs the high school. They make 2000 copies and decide to pass them out at school.

They take the letter to the principal to get his permission to pass them out at school. The principal says it's alright for them to pass out the letter as long as they don't pass it out in front of any doors.

A, B and C go out in the hall and start to pass the letter out in front of the door and in classes.

D really likes the principal. He sees the letter and tells A, B, and C to stop handing them out. They refuse! So D asks to help pass out the letters. A, B and C agree to give D a stack of letters. D takes the letters and throws them on the floor. The principal sees the letters on the floor, and tells A, B and C that they can't pass out any more letters.

1. Did A, B and C do anyhing wrong?
2. Did the principal have the right to stop A, B and C?
3. What should the principal have done?

EXAMPLE 2f

MODULE IV—CLUBS, EXTRA CURRICULAR ACTIVITIES

A group of black students decide that they want to form a black student union in their school. So, they ask the principal if they can have it and meet as a school organization.

The principal says they can have it as long as they let students of any color join. The black students want an all black club, so they don't get approval of the school and they start meeting at each other's houses after school. The principal finds out and suspends the students.

1. Were the students wrong in forming the club against the principal's advice?
2. Was the principal wrong in not allowing the students to form the club?
3. Was it legal for the principal to suspend the students?

EXAMPLE 3

MODULE VI—SMALL GROUP EXERCISE #1

Topics

1. Students should be able to smoke in school.
2. No one should have to go to school.
3. The school should be run by the students.
4. The student council should be disbanded because they don't do anything.
5. Students should be able to go out for lunch.
6. Girls should be allowed to play *any* varsity sport.
7. Boys should be *required* to take home economics.

8. There should be school all year long.
9. There should not be any required classes.
10. Teachers should not give grades.
11. The school should not suspend anyone.

EXAMPLE 4a

Module VI—Exercise #2-Fact Sheet A

The other day I went into the bathroom. When I got inside, there were a group of people smoking. I knew several of the people, so I stopped and started talking to them. Well, as we were talking, in came this teacher. The teacher saw the smoke coming from the area we were in and said, "Alright, everyone down to the assistant principal's office."

So, I said to the teacher, "What did I do?"

The teacher got angry then and started screaming, "Get down to the office—get to the office now."

So we all marched down to the office. When we got to the office the teacher told us to wait in the outer office. The teacher and the assistant principal talked for awhile. Then the assistant principal called us all into the office and kicked us out of school for smoking.

Additional Facts

A—Who?

.... 1) How many other students were involved?
Six (6).

.... 2) Who were the other students?
Students # 1–6.

.... 3) Who was the teacher?
Mr. or Mrs. Jones.

.... 4) Who was the assistant principal?
Mr. Smith.

.... 5) Were there others students in the bathroom?
Yes, about 20.

B—What?

.... 1) What was being smoked, marijuana or cigarettes?
Cigarettes.

.... 2) Did you smoke any?
No.

.... 3) Did anyone have a cigarette when the teacher came in?
Yes, two people.

.... 4) What did they do with the cigarettes?
Put them out on the floor.

.... 5) Did the teacher pick them up?
I don't know.

C—When?

.... 1) What date did this happen?
January 22, 1973.
.... 2) What time of day did this happen?
Around 10:00 a.m.
.... 3) Were you supposed to be in class?
No, it was between classes.
.... 4) How long were you suspended for?
The rest of the semester.

D—Miscellaneous

.... 1) Did you receive a letter from the school?
Yes.
.... 2) What was the reason for given for your suspension?
Smoking marijuana.
.... 3) Have you ever been suspended before?
Yes, once for skipping.
.... 4) How do your parents feel about the suspension?
They want me back in school.
.... 5) Were the police contacted?
No.
.... 6) Did the assistant principal listen to your side of the story before he suspended you?
No.

EXAMPLE 4b

Module VI—Exercise #2–Fact Sheet B

John Smith and I got in a fight the other day. The teacher was out of the room when the fight started. Just when the teacher walked back into the room, I blasted John in the mouth. The teacher sent us both down to the assistant principal's office and he kicked us out of school.

A—Who?

.... 1) What is the teacher's name?
Mr. Johnson.
.... 2) Which assistant principal kicked you out?
Mr. Bay.
.... 3) Were there other students in the room when the fight started?
Yes, three others.
.... 4) Who threw the first punch?
He did.

B—What?

. . . . 1) What started the fight?
John gave me a bite of his hot dog and I took a big bite and he got mad.

. . . . 3) Did you try to prevent the fight?
Yes, I said, "Come on man, let's not fight." Then he hit me again.

. . . . 3) Did the teacher ask what happened?
No.

C—When?

. . . . 1) What day did this happen?
January 22, 1973.

. . . . 2) What time did this happen?
Between first and second hours.

. . . . 3) How long were you suspended for?
Five days.

D—Miscellaneous

. . . . 1) Did you receive a letter from the school?
Yes.

. . . . 2) What reason was given for your suspension?
Fighting.

. . . . 3) Have you ever been suspended?
No.

. . . . 4) Did the assistant principal try to talk to you before he suspended you?
No.

EXAMPLE 5a

Module VI—Exercise #3–Administrator Role

Mr. Jones

You are 30 years old. You have a wife and four children. You've just moved to Saginaw and you're buying a new home and a car. You go to school at night to work on your Ph.D. in education. Someday, after you've finished your Ph.D., you would like to become a school superintendent in a city of this size. The principal at this school before you was fired because he couldn't control the students. You were hired because you didn't have much trouble at your previous school.

Since you took over in September, the school has been pretty quiet. Lately, there have been large groups of students hanging around in the halls disturbing classes. Several teachers have complained and someone has told the newspaper that you can't control the students either.

In your first meeting with students you found out that the reason they aren't going to class is that the teachers don't care about the students learning, they just want them to keep quiet. You really sympathize with the students because you know that many of your teachers are incompetent. But the public pressure is on you to get the students back in class quietly.

During your discussion with the student leader you should agree that the situation is horrible but tell him/her that you refuse to discuss it with him/her until the students go back to class. Under no circumstances are you to give in.

EXAMPLE 5b

Module VI—Exercise # 3–Student Leader

John Doe

You are a senior at the high school. You would like to attend The University of Michigan after you graduate. You've always been active in school affairs. It's about time for the principal to send in recommendations to the university. A bad recommendation might mean the difference between getting accepted or rejected.

For the last few weeks things have been pretty tense at the school. The teachers have beer unbearable. The students have reacted by not going to classes and hanging around in the halls.

Last night the student body held a mass meeting to discuss the situation in the school. They developed a list of demands which include:

1. More free time during the school day.
2. Student evaluation of teachers.
3. Removal of incompetent teachers.
4. A student-controlled teacher selection committee.
5. An end to suspensions because of tardiness or absences.

Also, at the meeting last night you were selected as a one-person committee to present the demands to the principal. You were also told that the demands were non-negotiable and, if not accepted by 3:00 p.m. today, the students would leave the school immediately and boycott it until such time as their demands were met.

During your discussion with the principal you cannot negotiate the demands. You must convince him to accept them immediately.

EXAMPLE 6

I. *Define the problem*

  A. What happened?

  B. Who is involved?

    1. Who is complaining?
    2. Who is the complaint against?
    3. Who are witnesses?

C. What rule, if any, has been vilolated?
D. Is the rule involved in conflict with the law?
E. Is additional information necessary?

II. *Define the objectives*
A. What are possible objectives?
B. What does the student desire?
C. What does the parent desire?
D. What does the student advocate suggest?
E. What is the decision on objectives?
F. Will you compromise?

III. *Prepare your case*
A. How will you present the facts?
  1. Are the facts in your favor?
  2. Are there conflicting facts?
  3. Can conflict in facts be explained?
B. Are there extenuating circumstances that account for problems?
C. Is there legal authority (board policy, statutes or cases) on your side?

IV. *Design a strategy*
A. Do school rules provide a procedure for solving problems?
  1. Grievance procedure.
  2. School board policy.
  3. Other.
B. Within school's procedure or with your own design, who are the important people that will be involved in solving the problem?
C. What person(s) has the power to make the ultimate decision?
D. Who (i.e., parent, student, student advocate) will make contacts with decision makers?
E. Which faculty members might help?
F. Conferences or hearings?

V. *Execute!!!*
A. Have all necessary persons been contacted?
B. Have all pertinent facts been presented?

VI. *Evaluate!!!*
A. Were objectives reached?
B. Who was instrumental (i.e., teacher, administrator) in decision?
C. What should have been done but was not?
D. Is there an appeal?

EXAMPLE 7a

MODULE VIII

Ann had been having problems with teacher A for the entire semester. The teacher has continually singled Ann out for laughing or talking when the entire class is doing the same thing. Last week Ann decided that she wasn't going to take it anymore and asked the teacher why he was picking on her when the whole class was talking.

The teacher replied, "Shut up and don't talk back." An argument followed in which both Ann and teacher used profanity. When the teacher ordered Ann out of his class she refused and the Assistant Principal had to be called in.

When the Assistant Principal got Ann down to the office he told her to go home and called the Superintendent. He explained to the Superintendent what had happened and recommended that Ann be suspended from school. The Superintendent agreed and Ann was sent home.

As soon as Ann got home, she explained the situation to her parents. Her mother immediately called the Superintendent and requested a Board hearing.

On the day of the hearing, Ann, her parents and their attorney showed up at the Board office. The attorney was told it was a closed hearing and she couldn't come in.

Inside the room, the principal told what had happened and said Ann should be expelled. When Ann's father said that he would like to hear Ann's side, the President of the board said that they had enough evidence.

The board members went out for a few minutes and returned to say Ann was expelled for the rest of the year.

EXAMPLE 7b

DRESS CODE

John and Bill have been part of a local rock group for two years. This past summer they decided that they needed a more up-to-date image for the group. So, all the members decided to change their hair and clothing styles.

John, who is white, decided to let his hair grow long. Bill, who is black, decided to have his hair braided in the popular cornrow style. The entire group also agreed to get clothing that was expressive of their music, life-style, and political beliefs. They purchased low-rise hip huggers, high heel boots and silk shirts that opened to mid-chest to expose their hairy chests.

When school started in the fall, most of the students were amazed and curious at the new Bill and John and they were the talk of the school.

As soon as the principal got word that there was a "new John & Bill," he called them to his office and demanded that they leave school and not return until they had on the proper clothing and hair style. Also, he told

Bill not to wear his sunglasses in the school anymore. Bill's glasses are the new type which turn to sunglasses automatically when hit by enough light.

EXAMPLE 7c

FREE PRESS

Jane and Joe had worked for two years on the school newspaper. During the summer before their senior year they attended a workshop on high school journalism. While conversing with other students they realized how much censorship was imposed on them by the advisor.

When they returned to school in the fall, they confronted the advisor and told him that they refused to let him censor their articles. He told them it was school policy and they had to abide by it.

Jane and Joe had already decided that they wouldn't be censored, so, after a lot of thought they agreed to withdraw from the Newspaper staff and publish their own newspaper.

For the next few weeks they both spent all their spare time writing and putting together their newspaper. They even convinced three of their friends to quit the school paper and join them.

Last week Jane, Joe and company distributed their newspaper. They called it *Changing Times*. *Changing Times* was an automatic success with students. But the faculty was particularly upset about *Changing Times* because it contained cartoons showing faculty members in comic poses. For instance, the principal was pictured scratching his butt and picking his nose simultaneously. The caption beneath the picture read: "Our principal searching into the matter." Along with the cartoon was an article detailing the principal's inconsistencies in disciplining students. Similar articles and cartoons were presented describing other faculty members.

The students felt that *Changing Times* was hilarious. Everyone wanted to know who wrote it. The paper was unsigned.

When the principal saw *Changing Times* he went crazy. He called all the hall walkers in and told them to find out who wrote it. After several hours, the hall walkers came up with the names of Jane and Joe. The principal called them into his office and suspended them from school. He also ordered all faculty to collect any copies of *Changing Times* that they could find.

A REVIEW OF THE MICHIGAN DEPARTMENT OF EDUCATION'S DRAFT PUBLICATION: *A GUIDE TO STUDENT'S RIGHTS AND RESPONSIBILITIES IN MICHIGAN*

DAVID LOWMAN

Mr. Lowman is an Education Consultant with the Michigan Department of Education, Lansing, Michigan.

It is indeed gratifying for me, both personally and professionally, to be here today and to be participating in this conference on students' rights and responsibilities.

It is, I am sure, coincidental that my arrival in Michigan three years ago to work for the Michigan Department of Education marked the essential beginnings of the Department's efforts in this broad area of school concern. To be sure, the State Board of Education and the Department, prior to 1971, had made some initial, formative responses to the requests and complaints of the Michigan school community, but by and large those responses were uninformed, careless, ineffectual and of low priority in Lansing. Students' rights was an area of only emerging interest. The few cases reported either from local school districts or the courts were, I believe, generally viewed with bemusement and wonder rather than with geniune concern for the administration of justice within our schools. Complaints telephoned or written to the Department were apt in those days to be shunted almost anywhere within our large agency with the result that the problems and issues represented by those complaints were handled in a variety of ways, or not at all depending on who received the call and how angry and persistent the caller was.

As late as early 1971, one can only guess at the existence and profusion of organized, written codes of student conduct—the rules and regulations enacted by local boards of education and their administrators governing the behavior of students. It will always be my suspicion, not substantiated by any verifiable data, that fully half of Michigan's 600 school districts had no comprehensive written rules and regulations, no procedural due process safeguards, no code of student conduct in early 1971. My estimate of 50% may be conservative.

Today, scarcely three years later, that has changed. While there are a

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NOTE: A copy of *A Guide to Students' Rights and Responsibilities in Michigan*, as referred to by Mr. Lowman, appears in the Appendix.

few exceptions, local Michigan school disricts have at least responded to the times by reducing to writing some of the uniform rules and regulations affecting and controlling the behavior of students. These local attempts to provide a measure of district-wide consistency are in many cases long overdue and, I believe, only one step in the right general direction. However, in fairness to local school districts and those officials charged with administering student justice, it must be said that the leadership and guidance provided by the state in this area has not always been what it might have been. Allow me to give you an illustration.

In December of 1970, as a partial response to a spate of disruptive incidents occurring in some Michigan schools, the State Board of Education adopted a resolution that required each local school district in the state to adopt and enact a written code of student conduct. Further, the Board's resolution indicated that these locally adopted codes of conduct should concern themselves in part with the provision of procedural due process safeguards. These local codes were to be adopted by April 1, 1971. The point of this historical illustration is this: while requiring local school districts to enact codes of conduct, the State Board of Education provided no instruction as to how they were to be done, what they should specify, or what points they were to appropriately address. In addition, while the State Board's resolution called for the provision of procedural due process safeguards, at no time did the Board define for local school officials what it considered due process to be, how much was necessary, or how it was to be provided.

Well, that was three years ago. Today, after much controversy and with much attention by the State Board of Education and other concerned organizations we are, I believe, only several weeks away from publication of a document entitled, "A Recommended Guide to Students' Rights and Responsibilities in Michigan." The draft document before me now is marked "Revision #8," but, in fact, it represents more nearly the twenty-fifth revision since the paper was originally drafted late in the summer of 1973. The paper has been reviewed by a number of educational organizations including the Michigan Education Association, the Michigan Federation of Teachers, the Michigan Association of School Administrators, the Michigan Association of School Boards, the Michigan Association of Secondary School Principals, the now defunct Ad Hoc Commission of Disorder and Disruption in Michigan Secondary Schools and the Council on Elementary and Secondary Education. Finally, the paper has been reviewed by the Michigan Attorney General's office and reviewed and adopted by the State Board of Education itself. For reasons unclear to me, the paper has also been revised eight times since the Board's formal adoption of the paper last November. In any event, I suspect that by the time school begins next fall, the Guide will be a reality and I hope it will help students, their parents and school officials.

Let me spend now several minutes telling you about the Guide to Students' Rights and Responsibilities.

In the first place, the document intends to provide a source of information regarding what appear to be the most pressing concerns of students, parents and school officials in the general area of students' rights. The information provided is largely of a legal nature, that is, it attempts to present the law as it exists in the Michigan School Laws, decisions of Michigan and federal courts, and opinions of the Michigan Attorney General. Because of the rapidly changing nature of school law, modified and expanded as it is so often by the courts there is absolutely no reason to believe the document will remain viable for very long without rather substantial revision. In fact, because the Michigan Supreme Court's recent vacating of their earlier decision in the case of *Milliken v. Green*, considerable (and, in my opinion, crippling) revision of the guide was necessary dealing with the constitutional right to an education and subsequent due process provisions. I suspect that rapidly changing case law will therefore require the continual and regular revision of this paper if it is to have any worth at all.

Secondly, the "Guide" attempts, in most cases, to avoid telling local school districts what they should or should not do. It was my feeling that a guide that would truly help students would also avoid telling local school officials what to do or what not to do. I thought, and time may prove me wrong, that to openly adopt an advocacy position for any one side, that is, school officials on the one hand; students on the other, would be to quash any substantive efforts to help schools and students by our agency for the near future. I'll explain that remark a little later. I thought that schools and students would be best served by an honest, competent, realistic view of the law, the inference, of course, being that school officials, being law-abiding citizens, being concerned with the smooth, orderly and just operation of their schools, and being desirous of safeguarding each of the citizens they serve, even young ones, with their proper legal rights, would say to themselves, "Oh, oh. This publication of the State Board of Education says that that court and this Attorney General's opinion have decided that this administrative practice we've been implementing since 1968 is wrong. In that case, we'd better change our ways." Well, you can see that my assumption is that if school officials and students both know that a given practice is apt to be held legal in a court and that one is just as apt to be held illegal, that schools might become more law-abiding and less disruptive, and then we would all really concentrate on the genuine business of schools. Those of us who are interested in the concept of educational accountability might see this approach as one designed to make schools more accountable for their actions and inactions in the area of student rights.

Next, this publiction deals with eleven different substantive areas of concern regarding students' rights and responsibilities. Those areas are: student smoking, school records, student publications, other first amendment rights, dress and grooming, marriage and pregnancy, corporal punishment, search and seizure, police in the schools, the withholding of grades, credits and transcripts, fraternities, and the 18-year old age of majority. In each of these eleven areas current law, practice and suggested procedures are presented.

Given the political realities of education in Michigan in 1974, I believe an advocacy role for the Michigan State Department of Education and its staff is not feasible. I believe that the mere existence of this document, written largely from a factual, non-advocate point of view will do as much or more for the furtherance of students' rights as anything before done in the state. At least I hope that is so.

APPENDIX I

I. U.S. Constitution and Federal Statute Excerpts

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I. U.S. Constitution Federal Statute Excerpts

A. CONSTITUTIONAL PROVISIONS

1. *Freedom of Speech or Press*

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right to the people peaceably to assemble, and to petition the Government for a redress of grievances.

(U.S. Constitution, First Amendment)

2. *Equal Educational Opportunities*

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

(U.S. Constitution, Fourteenth Amendment, section 1)

B. STATUTORY PROVISIONS

1. *Non-Discrimination in Federally Assisted Programs* (42USCA2000d)

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program receiving Federal financial assistance.

2. *Prohibition Against Sex Discrimination in Education* (20USCA1681)

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program receiving Federal financial assistance.

3. *Protection of the Rights of Privacy of Parents and Students* (20USCA) (Education Amendments of 1974)

SEC. 438. (a) (1) (A) No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the education records of their children. If any material or document in the education record of a student includes information on more than one student, the parents or one of such students shall have the right to inspect and review only such part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material. Each educational agency or institution shall establish appropriate procedures for the granting of a request by parents for access to the education record of their children within a reasonable period of time, but in no case more than forty-five days after the request has been made.

(B) The first sentence of subparagraph (A) shall not operate to make available to students in institutions of postsecondary education the following materials:

(i) financial records of the parents of the student or any information contained therein;

(ii) confidential letters and statements of recommendation, which were placed in the education records prior to January 1, 1975, if such letters or statements are not used for purposes other than those for which they were specifically intended;

(iii) if the student has signed a waiver of the student's right of access under this subsection in accordance with subparagraph (C), confidential recommendations—

(I) respecting admission to any educational agency or institution,

(II) respecting an application for employment, and

(III) respecting the receipt of an honor or honorary recognition.

(C) A student or a person applying for admission may waive his right of access to confidential statements described in clause (iii) of subparagraph (B), except that such waiver shall apply to recommendations only if (i) the student is, upon request, notified of the names of all persons making confidential recommendations and (ii) such recommendations are used solely for the purpose for which they were specifically intended. Such waivers may not be recurred [sic] as a condition for admission to, receipt of financial aid from, or receipt of any other services or benefits from such agency or institution.

(2) No funds shall be made available under any applicable program to any educational agency or institution unless the parents of students who are or have been in attendance at a school of such agency or at such institution are provided an opportunity for a hearing by such agency or institution, in accordance with regulations of the Secretary, to challenge the content of such student's education records, in order to insure that the records are not inaccurate, misleading, or otherwise in violation of the privacy or other rights of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading, or otherwise inappropriate data contained therein and to insert into such records a written explanation of the parents respecting the content of such records.

(3) For the purposes of this section the term "educational agency or institution" means any public or private agency or institution which is the recipient of funds under any applicable program.

(4) (A) For the purposes of this section, the term "education records" means, except as may be provided otherwise in subparagraph (B), those records, files, documents, and other materials which—

(i) contain information directly related to a student; and

(ii) are maintained by an educational agency or institution, or by a person acting for such agency or institution.

(B) The term "educational records" does not include—

(i) records of institutional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute;

(ii) if the personnel of a law enforcement unit do not have access to education record under subsection (b) (I), the records and documents of such law enforcement unit which (I) are kept apart from records described in subparagraph (A), (II) are maintained solely for law enforcement purposes, and (III) are not made available to persons other than law enforcement officials of the same jurisdiction;

(iii) in the case of persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution, records made and maintained in the normal course of business which relate exclusively to such person in that person's capacity as an employee and are not available for use for any other purpose; or

(iv) records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, which are created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or para-professional capacity, or assisting in that capacity, and which are created, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment; provided, however, that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.

(5) (A) For the purposes of this section the term "directory information" relating to a student includes the following: the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

(B) Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent's prior consent.

(6) For the purposes of this section, the term "student" includes any person with respect to whom an educational agency or institution maintains education records or personally identifiable information, but does not include a person who has not been in attendance at such agency or institution.

(b) (1) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of educational records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a)) of students without the written consent of their parents to any individual, agency, or organization, other than to the following—

(A) other school officials, including teachers within the educational institution or local educational agency who have been determined by such agency or institution to have legitimate educational interests;

(B) officials of other schools or school systems in which the student seeks or, intends to enroll, upon condition that the student's parents be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record;

(C) authorized representatives of (i) the Comptroller General of the United States, (ii) the Secretary, (iii) an administrative head of an education agency (as defined in section 408(c) of this Act), or (iv) State educational authorities, under the conditions set forth in paragraph (3) of this subsection; and

(D) in connection with a student's applications for, or receipt of, financial aid;

(E) State and local officials or authorities to which such information is specifically required to be reported or disclosed pursuant to State statute adopted prior to November 19, 1974;

(F) organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students and their parents by persons other than representatives of such organizations and such information will be destroyed when no longer needed for the purpose for which it is conducted;

(G) accrediting organizations in order to carry out their accrediting functions;

(H) parents of a dependent student of such parents, as defined in section 152 of the Internal Revenue Code of 1954; and

(I) subject to regulations of the Secretary in connection with an emergency, appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons.

(2) No funds shall be made available under any applicable program to any education agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records other than directory information, or as is permitted under paragraph (1) of this subsection unless—

(A) there is written consent from the student's parents specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student's parents and the student if desired by the parents, or

(B) such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency.

(3) Nothing contained in this section shall preclude authorized representatives of (A) the Comptroller General of the United States, (B) the Secretary, (C) an administrative head of an eduction agency or (D) State educational authorities from having access to student or other records which may be necessary in connection with the audit and evaluation of Federally supported education programs, or in connection with the enforcement of the Federal legal requirements which relate to such programs: *Provided*, That except when collection of personally identifiable information is specifically authorized by Federal law, any data collected by such officials shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, and enforcement of Federal legal requirements.

(4) (A) Each educational agency or institution shall maintain a record, kept with the education records of each student, which will indicate all individuals (other than those specified in paragraph (1) (A) of this sub-

section), agencies, or organizations which have requested or obtained access to a student's education records maintained by such educational agency or institution, and which will indicate specifically the legitimate interest that each such person, agency, or organization has in obtaining this information. Such record of access shall be available only to parents, to the school official and his assistants who are responsible for the custody of such records, and to persons or organizations authorized in, and under the conditions of, classes (A) and (C) of paragraph (1) as a means of auditing the operation of the system.

(B) With respect to this subsection, personal information shall only be transferred to a third party on the condition that such party will not permit any other party to have access to such information without the written consent of the parents of the student.

(c) The Secretary shall adopt appropriate regulations to protect the rights of privacy of students and their families in connection with any surveys or data-gathering activities conducted, assisted, or authorized by the Secretary or an administrative head of an education agency. Regulations established under this subsection shall include provisions controlling the use, dissemination, and protection of such data. No survey or data-gathering activities shall be conducted by the Secretary, or an administrative head of an education agency under an applicable program, unless such activities are authorized by law.

(d) For the purposes of this section, whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.

(e) No funds shall be made available under any applicable program to any educational agency or institution unless such agency or institution informs the parents of students, or the students, if they are eighteen years of age or older, or are attending an institution or postsecondary education, of the rights accorded them by this section.

(f) The Secretary, or an administrative head of an education agency, shall take appropriate actions to enforce provisions of this section and to deal with violations of this section; according to the provisions of this Act, except that action to terminate assistance may be taken only if the Secretary finds there has been a failure to comply with the provisions of this section, and he has determined that compliance cannot be secured by voluntary means.

(g) The Secretary shall establish or designate an office and review board within the Department of Health, Education, and Welfare for the purpose of investigating, processing, reviewing, and adjudicating violations of the provisions of this section and complaints which may be filed concerning alleged violations of this section. Except for the conduct of hearings, none of the functions of the Secretary under this section shall be carried out in any of the regional offices of such Department.

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II. Michigan Constitution and State School Code Excerpts

A. CONSTITUTION OF THE STATE OF MICHIGAN OF 1963

1. *Equal Protection; Discrimination* (Article 1, Sec. 2)

No person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of race, religion, color or national origin.

2. *Freedom of Speech and Press* (Article 1, Sec. 5)

Every person may freely speak, write, express and publish his views on all subjects, being responsible for the abuse of such right; and no law shall be enacted to restrain or abridge the liberty of speech or of the press.

3. *Encouragement of Education* (Article 8, Sec. 1)

Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.

4. *Free Public Elementary and Secondary Schools; Discrimination* (Article 8, Sec. 2)

The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law. Every school district shall provide for the education of its pupils without discrimination as to religion, creed, race, color or national origin (aid to private school prohibition).

B. STATE STATUTORY PROVISIONS

1. *Truant School* (M.C.L.A. 340.205)

The board may establish, maintain and conduct a parental or truant school for the purpose of affording a place of confinement, discipline, instruction and maintenance of children of the city of compulsory school age who may be committed thereto by a court of competent jurisdiction, or admitted thereto on the recommendation of such judge with the consent of their parents or guardian. It shall give no religious instructions in said school, and no child shall be committed or admitted thereto who has ever been convicted of any offense, punishable by confinement in any penal institution.

2. *Eligibility to School Board Office* (M.C.L.A. 340.492)

Any school elector in a school district, who is the owner in his own right of property which is assessed for taxes, shall be eligible to election or appointment to office in such school district: Provided, That where a husband and wife own property jointly, if otherwise qualified, each shall be eligible to appointment or election to school office: Provided further, That in any school district which registers its school electors, if less than 25% of the registered school electors are school tax electors, any qualified school elector is elegible to be elected as a member of the board of education. (Property ownership requirement invalidated as unconstitutional. OP Atty Gen 1971. No. 4723)

3. *School Electors, Qualifications; Repeat Elections on Proposals* (M.C.L.A. 340.511)

A school elector shall possess the qualifications provided for qualified electors in section 1 of article 2 of the constitution and statutes enacted thereunder. Upon questions involving the increase of the ad valorem tax limitation imposed by section 6 of article 9 of the constitution for a period of more than 5 years or the issue of bonds, school electors shall possess the qualification provided in section 6 of article 2 of the constitution. No person shall vote in any school election unless he shall have resided within the school district at least 30 days next preceding the election. The same question or measure involving consolidation of school districts, annexation of entire districts, annexation or transfer of a portion of 1 school district to another, or bonding of school districts, shall not be submitted to the voters of any school district more often than once in 6 months, unless the board is presented with a petition requesting the board to call another election and signed by qualified school electors of the district to the number of not less than 50% of the registered general electors residing in the district as of the date the petition is presented to the board. Any city or township clerk shall certify to the intermediate school district superintendent of schools the number of registered general electors residing in a school district when requested by the intermediate school district superintendent, who shall make the information available to the board of the district.

4. *Board of Education; Meetings Public; Records, Temporary Officers* (M.C.L.A. 340.561)

All business which the board of any district is authorized to perform shall be done at a public meeting of the board and no act shall be valid unless voted at a meeting of the board by a majority vote of the members elect of the board and a proper record made of the vote. A meeting in which all members are present, with or without proper notice, shall be considered a legal meeting for the transaction of business. Meetings of the board shall be public meetings and no person shall be excluded therefrom. The board may hold executive sessions, but no final action shall be taken at any executive session. The minutes of all board meetings must be signed by the secretary. In the absence of the secretary in any meeting, the president shall appoint a temporary secretary who shall sign the minutes of the meeting. In the absence of the president, the other members present shall elect a temporary president.

5. *Records Public; Inspection* (M.C.L.A. 340.562)

The board of every district shall purchase a record book and such other books, blanks and stationery as may be necessary to keep a record of the proceedings of the board, the accounts of the treasurer, and for doing the business of the district in an orderly manner. All records of the board shall be public records and subject to inspection under section 750.492 of the Compiled Laws of 1948.

6. *Custody and Preservation of Property, Management of Schools* (M.C.L.A. 340.578)

Every board shall have the general care and custody of the school and property of the district and make and enforce suitable rules and regulations for the general management of the schools and the preservation of the property of the district.

7. *School Property; Use as Community Center; Rules; Damages; Rent* (M.C.L.A. 340.580)

The board of any school district in this state, upon the written application of any responsible organization located in said school district, or of a group of at least 7 citizens of said school district, may grant the use of all school grounds and schoolhouses as community or recreation centers for the entertainment and education of the people, including the adults and children of school age, and for the discussion of all topics tending to the development of personal character and of civic welfare. Such occupation, however, shall not seriously infringe upon the original and necessary uses of the properties. The board in charge of such building shall prescribe such rules and regulations for their occupancy and use as herein provided as will secure a fair, reasonable and impartial use of the same. The organization or group of citizens applying for the use of properties as specified above shall be responsible for any damage done them over and above the ordinary wear, and shall, if required, pay such use or rental fee as may be determined by the board.

8. *Non-Resident Pupils; Tuition; Per Capita Cost* (M.C.L.A. 340.582)

The board of any district may admit to the district school nonresident pupils and shall determine the rates of tuition of such pupils and shall collect the same. Tuition for grades kindergarten to 6, inclusive, shall not exceed 25% more than 115% more than the operation cost per capita for the number of pupils in membership in grades kindergarten to 12, inclusive. Tuition for grades 7 to 12, inclusive, shall not exceed 12½% more than 115% of the operation cost per capita for the number of pupils in membership in grades kindergarten to 12, inclusive. In districts not maintaining grades above grade 8, the tuition shall not exceed 25% more than the operation cost per capita for the number of pupils in membership in grades kindergarten to 8, inclusive. The operation cost and membership so used shall be those of the preceding fiscal year. The per capita cost herein referred to shall not be interpreted to include money expended for school sites, school building construction, equipment payment of bonds, or such other purposes as shall be determined by the superintendent of public instruction not properly included in operation costs.

9. *Suspension or Expulsion of Pupils, Grounds; Evaluation of Pupil if Handicapped* (M.C.L.A. 340.613)

The board may authorize or order the suspension or expulsion from school of a pupil guilty of gross misdemeanor or persistent disobedience when in its judgement the interests of the school may demand it. If there is reasonable cause to believe that the pupil is handicapped, and the local school district has not evaluated the pupil in accordance with rules of the state board, the pupil shall be evaluated immediately by the intermediate district of which the local school district is constituent in accordance with section 340.298 c.

10. *Other Duties, Rules, Safety of Pupils in Attendance or Enroute to or from School* (M.C.L.A. 340.614)

Every board shall have authority to make reasonable rules and regulations relative to anything whatever necessary for the proper establishment, maintenance, management and carrying on of the public schools of such district, including regulations relative to the conduct of pupils concerning their safety while in attendance at school or en route to and from school.

11. *Behavior Problems of Children Program; Visiting Teachers; Rules* (M.C.L.A. 340.618)

The board of education of any school district or the county board of education may establish a program designed for the prevention and treatment of behavior problems of children, and may employ persons to be knowns as visiting teachers and other personnel necessary to provide an adequate program for the purpose. The board of education of any school district or the county board of education proposing to establish the program shall first furnish evidence concerning local or county needs satisfactory to the superintendent of public instruction. The program shall be operated in accordance with rules and regulations established by the superintendent of public instruction in accordance with Act No. 88 of the Public Acts of 1943, as amended, being sections 24.71 to 24.82 of the Compiled Laws of 1948, and subject to Act No. 197 of the Public Acts of 1952, as amended, being sections 24.101 to 24.110 of the Compiled Laws of 1948.

12. *Compulsory Attendance at School* (M.C.L.A. 340.731)

(a) Except as provided in section 732 and subject to the provisions of subsection (b), every parent, guardian or other person in this state, having control and charge of any child between the ages of 6 and 16 years, shall send such child, equipped with the proper textbooks necessary to pursue his school work, to the public schools during the entire school year, and such attendance shall be continuous and consecutive for the school year fixed by the district in which such child is enrolled. In school districts which maintain school during the entire year and in which the school year is divided into quarters, no child shall be compelled to attend the public schools more than 3 quarters in any one year; but a child shall not be absent for any 2 consecutive quarters.

(b) A child becoming 6 years of age before December 1 shall be enrolled on the first school day of the school year in which his sixth birthday occurs. A child becoming 6 years of age on or after December 1 shall be enrolled on the first day of the school year following the school year in which his sixth birthday occurs.

13. *Children not Required to Attend Public School* (M.C.L.A. 340.732)

In the following cases, children shall not be required to attend the public schools:

Private, parochial, or denominational school.

(a) Any child who is attending regularly and is being taught in a private, parochial or denominational school which has complied with all the provisions of this act and teaches subjects comparable to those taught in the public schools to children of corresponding age and grade, as determined by the course of study for the public schools of the district within which such private, denominational or parochial school is located;

Page or messenger in legislature.

(b) Any child who is regularly employed as a page or messenger in either branch of the legislature during the period of such employment;

Children under 9, distance from school; exceptions.

(c) Children under 9 years of age whose parents do not reside within 2½ miles by the nearest traveled road, of some public school: Provided, That if transportation is furnished for pupils in said district, this exemption shall not apply.

Confirmation classes, attendance.

(d) Any child 12 to 14 years of age while in attendance at confirmation classes conducted for a period of not to exceed 5 months in either of said years.

Religious instructions classes off public school property.

(e) Any child who is regularly enrolled in the public schools while in attendance at religious instruction classes for not more than two class hours per week, off public school property during public school hours upon written request of the parent, guardian or person in loco parentis is in accordance with rules prescribed by the superintendent of public instruction.

14. *County Attendance Officer; Oath, Bond, Powers, Duties, District Attendance Officers* (M.C.L.A. 340.733).

The county superintendent of schools in each county shall select a person, or more than one if authorized by the county board of education, of good moral character to act as attendance officer or officers for the county. The person or persons so selected shall file with the county clerk an acceptance and oath of office and a bond in the sum of $1,000.00, with 2 sufficient sureties to be approved by the county clerk. The person or persons so selected shall be known as the county attendance officer or officers, and shall have all the powers of a deputy sheriff, and shall perform the duties of attendance officers in all school districts of the county when directed to do so by the country superintendent of schools, except as hereinafter provided. In school districts having a population of over 3,000, the board shall have authority to appoint 1 or more attendance officers and fix the compensation of the same, said compensation to be paid by the district: Provided, That if in any school district the board does not appoint an attendance officer, the county attendance officers shall act in such district.

15. *Attendance Data and Report; Primary District* (M.C.L.A. 430.736)

It shall be the duty of the secretary of the board in primary districts to provide the teacher, at the commencement of school, with a copy of the last school census, together with the names and addresses of the persons in parental relation, also the address of the county superintendent of schools. The teacher shall, at the opening of school and at such other times as may be necessary, compare such census list with the enrollment of the school and report to the county superintendent of schools the names of the parents or other persons in parental relation whose children of the ages hereinbefore mentioned are not in regular attendance at school; also the names of parents or other persons in parental relation who have children of school age not included in such census and who do not attend school.

16. *Districts Other than Primary* (M.C.L.A. 340.737)

In all districts except primary districts, the secretary of the board shall, at the commencement of school, furnish a copy of the last school census to the superintendent of schools, or the teacher or teachers if no superintendent is employed, in such districts, together with the name and address of the attendance officer under whose jurisdiction they act, and it shall be the duty of said superintendent, teacher or teachers, at the opening of school, to compare said census list with the enrollment of the school or schools, and from time to time as it may be necessary report to the proper attendance officer the names and addresses of any parents or other persons in parental relation whose children of the ages hereinbefore mentioned are not in regular attendance at the public schools, also the names of parents or others in parental relation whose children are not in the school and whose names are not included in such census.

17. *Private, Denominational or Parochial Schools* (M.C.L.A. 340.738)

It shall be the duty of the principal, or any other person or persons in charge of every private, denominational or parochial school, at the opening of such schools and at such other time as the superintendent or county superintendent of schools hereinafter mentioned shall direct, to furnish to the superintendent of schools of the district in which such private, denominational or parochial school is situated or to the country school superintendent or superintendent of schools, the name, age and grade of every child who has enrolled at such schools and the number or name of the district and the city or township and county where the parent, guardian or person in parental relation resides and the name and address of the parent, guardian or other person in parental relation of every such child; and also the name, age and grade of every child who has enrolled in such schools and who is not in regular attendance thereat, together with the number or name of the district and the city or township and county where the parent, guardian or person in parental relation resides and the name and address of the parent, guardian or other person in parental relation to every such child.

18. *Nonattendance; Investigation by Attendance Officer*
(M.C.L.A. 340.739)

It shall be the duty of the attendance officer of the district, whenever notified by the teacher, superintendent or other persons of violations of this act, and the county attendance officer, when notified by the county superintendent of schools, to investigate all cases of nonattendance at school, and if the children complained of are not exempt from the provisions of this chapter under the conditions named in section 732, then he shall immediately proceed as provided hereinafter in this chapter.

Notice to parent as to nonattendance, failing work, behavior problem.

When a child has been repeatedly absent from school without valid excuse, or is failing in school work or gives evidence of behavior problems, and after attempts to confer with the parent or other person in parental relationship to such child have failed, the superintendent of schools, or the county superintendent of schools in a district which does not employ a superintendent, may request the attendance officer to notify such parent or other person in parental relationship by registered mail to come to the school or to a place designated by him at a time specified to discuss the child's absence or failing work or behavior problems with the proper school authorities.

Nonattendance of nonresident pupil.

The superintendent, or the teacher in a district which does not employ a superintendent, shall provide information concerning the nonattendance of any nonresident pupil to the county superintendent of schools of the county in which such nonresident pupil resides. It shall be the duty of the county attendance officer, when notified by the county superintendent or superintendent of schools, to investigate and proceed in all cases of non-attendance of nonresident pupils in the same manner as is hereinafter provided in this chapter for enforcing attendance of pupils attending schools in districts in which they reside.

19. *Violation of Act by Parents; Penalty* (M.C.L.A. 340.740)

In case any person, parent or other person in parental relation shall fail to comply with the provisions of this act, he shall be deemed guilty of a misdemeanor, and shall on conviction thereof be punished by a fine of not less than $5.00 nor more than $50.00, or imprisonment in the county or city jail for not less than 2 nor more than 90 days, or by both such fine and imprisonment in the discretion of the court.

20. *List of Teachers and Superintendents in Districts not Employing Attendance Officers* (M.C.L.A. 340.741)

It shall be the duty of the county superintendent of schools to furnish the attendance officer of the county, at the opening of the schools, with a list of the teachers and superintendents employed in his county in school districts other than those employing an attendance officer as provided in the preceding sections of this chapter.

21. *Failure to Send Child to School; Notice to Parent and Teacher; Notice of Teacher to Attendance Officer* (M.C.L.A. 340.742)

In case any parent or other person in parental relation shall fail to send the child or children under his or her control to the public school or other school as herein provided, the attendance officer, upon having notice from proper authority of such fact, shall give formal written notice in person or by registered mail to the parent or other person in parental relation that the child or children under his or her control shall present himself or themselves at the public school, or other school, as hereinbefore provided, on the next regular school day following the receipt of such notice, and that said child or children shall continue in regular and consecutive attendance in school. The attendance officer shall, at the same time the said formal notice is given to the parent or person in parental relation, notify the teacher or county school superintendent or superintendent of schools of the fact of notice, and it shall be the duty of the teacher or county school superintendent or superintendent of schools to notify the attendance officer of the failure on the part of the parent or other person in parental relation to comply with said notice.

22. *Complaint Against Parent, Punishment* (M.C.L.A. 340.743)

It shall be the duty of the attendance officer, after having given the formal notice described in section 742 hereof, to determine whether the parent or other person in parental relation has complied with the notice, and in case of failure to so comply he shall make a complaint against said parent or other person in parental relation having the legal charge and control of such child or children before any justice of the peace in the county where such party resides for such refusal or neglect to send such child or children to school; and said justice of the peace shall issue a warrant upon said complaint and shall proceed to hear and determine the same in the same manner as is provided by statute for other cases under his jurisdiction, and in case of conviction of any parent or other person in parental relation for violation of this act, said parent or other person in parental relation shall be punished according to the provisions of section 740 of this act: Provided, That in cities having a municipal or recorder's court and justice of the peace, the attendance officer shall make the aforesaid complaint before the magistrate of said municipal or recorder's court or before a justice of the peace, and said magistrate or justice shall issue a warrant and proceed to hear and determine the case in the same manner as is provided in the statute for other cases under his jurisdiction.

23. *School Personnel, Assistance to Attendance Officer* (M.C.L.A. 340.744)

It shall be the duty of all school officers, superintendents or teachers of other persons to render such assistance and furnish such information as they may have at their command to aid such attendance officer in the performance of his official duty.

24. *Ungraded School; Establishment* (M.C.L.A. 340.745)

The board of any district except primary districts may establish 1 or more ungraded schools for the instruction of certain children as defined and set forth in the following section. They may, through the attendance officer and superintendents of schools, require such children to attend said ungraded schools or any department of their graded schools as said board of education may direct.

25. *Children Assigned* (M.C.L.A. 340.746)

The following cases of persons between and including the ages of 7 and 16 years, residing in school districts described in section 745 of this chapter, shall be deemed juvenile disorderly persons and shall, in the judgment of the proper school authorities, be assigned to the ungraded school or schools as provided in section 745 of this chapter: Class 1, habitual truants from any school in which they are enrolled as pupils; class 2, children who, while attending any school, are incorrigibly turbulent, disobedient and insubordinate, or are vicious and immoral in conduct; class 3, children who are not attending any school and who habitually frequent streets and other public places, having no lawful business, employment or occupation.

26. *Physical Force to Take Possession of Dangerous Weapons from Pupils* (M.C.L.A. 340.755)

Any teacher or superintendent may use such physical force as may be necessary to take possession from any pupil of any dangerous weapon carried by him.

27. *Physical Force to Maintain Proper Discipline Over Pupils* (M.C.L.A. 340.756)

Any teacher or superintendent may use such physical force as is necessary on the person of any pupil for the purpose of maintaining proper discipline over the pupils in attendance at any school.

28. *Liability for Use of Physical Force; Gross Abuse* (M.C.L.A. 340.757)

No teacher or superintendent shall be liable to any pupil, his parent or guardian in any civil action for the use of physical force on the person of any pupil for the purposes prescribed in Sections 755 and 756 of this act, as amended, except in case of gross abuse and disregard for the health and safety of the pupil.

29. *Special Education* (Public Act 198, 1971)

Sec. 10. "Special education programs and services" as used in this act means educational and training programs and services designed for handicapped persons operated by local school districts, intermediate school districts, the Michigan school for the blind, the Michigan school for the deaf, department of mental health, department of social services, or any combination thereof, and ancillary professional services for handicapped persons rendered by agencies approved by the state board of education. Handicapped person shall be defined by rules promulgated by the state board of education. Handicaps include, but are not limited to, mental, physical, emotional, behavioral, sensory and speech handicaps. The programs shall include vocational training, but need not include academic programs of college or university level.

Sec. 11. "Special education personnel" as used in this act means persons engaged in and having professional responsibility for the training, care and education of handicapped persons in special education programs and services which include, but are not limited to, teachers, aides, socal workers, diagnostic personnel, physical therapists, occupational therapists, audiologists, speech pathologists, instructional media-curriculum specialists, mobility specialists, consultants, supervisors and directors.

Sec. 12. "Special education buildings and equipment" as used in this act means a structure, or portion of a structure, or personal property, accepted, leased, purchased, or otherwise acquired, prepared or used for special education programs and services.

Sec. 252b. (1) For the 1973–74 school year and thereafter the state board of education shall:

(a) Develop, establish and continually evaluate and modify in cooperation with intermediate school districts, a state plan for special education which shall provide for the delivery of special education programs and services designed to develop the maximum potential of every handicapped person. The plan shall coordinate all special education programs and services.

(b) Require each intermediate school district to submit a plan pursuant to subdivision (a) of section 298c, in accordance with the state plan and approve the same.

(c) Promulgate rules setting forth the requirements of the plans and the procedures for submitting them.

(d) A preliminary state plan shall be submitted to the legislature on or before July 1, 1972.

(e) The final state plan shall be submitted to the legislature on or before March 1, 1973, including recommendations for funding special education programs and services.

(2) For the 1973–74 school year and thereafter, if a local school district claims the existence of an emergency, due to extreme financial conditions because of insufficient operating funds or due to a severe classroom shortage and which emergency the local district claims renders it unable to provide special education programs and services in compliance with section 771a, it shall apply, in writing, to the state board no later than July 1 of the particular school year for approval to provide special education programs or services which do not comply with section 771a.

(3) In its application the local school district shall demonstrate the need to provide noncomplying special education programs and services and shall include the proposed programs and services it can provide and the efforts to be undertaken to alleviate the emergency. If the state board finds an emergency exists in the local school district for such school year, the state board may approve the providing of noncomplying special education programs or services and prescribe conditions therefor. The state board may extend the filing date for good cause.

(4) If the state board determines a local school district is not providing special education programs and services in compliance with section 771a, and the local school district has not obtained prior approval from the state board, the state board shall notify the local school district, in writing, of the noncompliance. Unless the local school district submits proof of compliance, or of an unforeseen emergency, within 30 days after receipt of the notice, the state board shall direct the intermediate district of which the local school district is a constituent to provide complying programs or services. The state board shall direct the intermediate district to provide only those programs or services which the state board determined are not in compliance with section 771a.

(5) Special education programs or services which the state board directs an intermediate district to provide shall be funded as if provided by the local school district and the local school district shall contribute to the intermediate district the unreimbursed cost of the programs or services.

SEC. 291a. As used in this chapter:

(a) "Intermediate school district" means the corporate body established in accordance with the provisions of this chapter.

(b) "Local school district" means a primary school district, a school district of the fourth class, a school district of the third class, a school district of the second class, a school district of the first class, or a special act school district.

(c) "Constituent school district" means a local school district whose territory is entirely within and is an integral part of an intermediate school district.

(d) "Board" means the board of education of the intermediate school district.

(e) "Superintendent" means the superintendent of the intermediate school district.

(f) "Reorganized intermediate district" means an intermediate district formed by the consolidation or annexation of 2 or more intermediate school districts as provided in section 302a.

(g) "Area vocational-technical education program" means a program of organized systematic instruction designed to prepare the following individuals for useful employment in recognized occupations:

(1) Persons enrolled in high school.

(2) Persons who have completed or left high school and who are available for full-time study in preparation for entering the labor market.

(3) Persons who have already entered the labor market and who need training or retraining to achieve stability or advancement in employment.

(h) "Area" as used in the phrase "area vocational-technical education program" means the geographical territory, both within and without the boundaries of either a K-12 school district, or a community college district which is designated as the service area for the operation of vocational-technical education programs by the state board of education.

(i) "Vocational education" means vocational or technical training or retraining which is given in schools or classes, including field or laboratory work incidental thereto, under public supervision and control, and is conducted as part of a program designed to fit individuals for gainful employment as semiskilled or skilled workers or technicians in recognized occupations, but excluding any program to fit individuals for employment in occupations which the superintendent of public instruction determines, and specifies to be generally considered professional or as requiring a baccalaureate or higher degree. The term includes vocational guidance and counseling in connection with the training, instruction related to the occupation for which the student is being trained or necessary for him to benefit from the training, and the acquisition and maintenance and repair of instructional supplies, teaching aids and equipment, and the construction or initial equipment of buildings and the acquisition or rental of land.

SEC. 298c. (1) The intermediate board may, and for the 1973–74 school year and thereafter the intermediate board shall:

(a) Develop, establish and continually evaluate and modify in cooperation with its constituent school districts, a plan for special education which shall provide for the delivery of special education programs and services designed to develop the maximum potential of every handicapped person of which the board is required to maintain a record under subdivision (f). The plan shall coordinate the special education programs and services operated or contracted for by the constituent school districts and shall be submitted to the state board of education for its approval. Intermediate district plans shall be submitted to the state board on or before November 1, 1972.

(b) Contract for the delivery of a special education program or service, in accordance with the intermediate district plan, pursuant to and in accordance with sections 252b and 771a. Under the contract the intermediate school district may operate a special education program or service, furnish transportation services and room and board.

(c) Employ or otherwise engage such special education personnel in accordance with the intermediate district plan, notwithstanding the provisions of subdivision (h) of subsection (1) of section 298a and appoint a director of special education meeting the qualifications and requirements as set forth in rules promulgated by the state board.

(d) Accept and use available funds or contributions from governmental or private sources for the purpose of providing special education programs and services consistent with this act.

(e) Lease, purchase or otherwise acquire, vehicles, sites, buildings or portions thereof and equip them, as it deems necessary for its staff, programs and services, notwithstanding the provisions of subdivisions (1) of subsection (1) of section 298a.

(f) Maintain a record of every handicapped person up to 25 years of age, who has not completed a normal course of study and graduated from high school and who is a resident of 1 of its constituent school districts, and the special education programs or services in which the handicapped person is participating, if any, as of the fourth Friday following Labor day and the Friday before Memorial day. The sole basis for determining the local school district of which a handicaped person is a resident shall be rules promulgated by the state board, notwithstanding the provisions of section 358. The records shall be maintained in accordance with rules promulgated by the state board.

(g) Have the right to place in appropriate special education programs or services any handicapped person for whom a constituent local school district is required to provide special education programs or services under section 771a.

(h) Investigate special education programs and services operated or contracted for by the board or constituent school districts and report in writing matters it deems constitute a failure to comply with the provisions of any contract, statute or rule governing the special education programs and services or of the intermediate district plan, to the local district and the state board.

(i) Pursuant to section 252b, operate the special education program or service, or contract for the delivery of the special education program or service, as if a local school district under section 771a. The contract shall provide for those items set forth in section 771a and shall be approved by the state board. The intermediate board shall provide for the transportation, or room and board, or both, of the persons participating in the program or service as if a local board under sections 601 and 601a.

(j) Receive the report of any parent or guardian or with the consent of any parent or guardian receive the report of a licensed physician, registered nurse, social worker, school or other appropriate professional personel whose training and relationship to handicapped persons provides competence to judge same and who in good faith believes that a person under the age of 25 examined by him is or may be handicapped and immediately evaluate such person in accordance with the rules promulgated by the state board. No person making or filing such report, nor any board, shall incur any liability to any person by reason of filing such report or seeking such evaluation, unless lack of good faith is proven.

(k) Evaluate pupils pursuant to and in accordance with section 613.

Sec. 317a. Boards coming under the provisions of sections 307a to 324a shall expend funds received under section 314a for special education purposes in accordance with rules promulgated by the state board of education.

Sec. 318a. Boards operating or contracting for the operation of special education programs or services may carry children in membership in the same manner as local school districts and shall be entitled to their proportionate share of any state funds available for such programs. Membership shall be calculated on the basis provided in rules promulgated by the state board of education.

Sec. 329c. The board of an intermediate school district which has adopted the provisions of sections 307a to 324a, and which has a constituent school district or districts which heretofore elected not to come under those provisions pursuant to section 329 shall submit before the 1973–74 school year to the electorate the question of adopting sections 307a to 324a. The election shall be called and held at the same time and in the same manner as provided in sections 308b and 308c for the original election held for the adoption of sections 307a to 324a. The board shall employ the form of ballot prescribed in section 316a for this election.

Sec. 601. The board of education of a local school district may provide, and for the 1973–74 school year and thereafter shall provide, by contract or otherwise for the transportation of handicapped persons who would otherwise be unable to participate in an appropriate special education program or service operated or contracted for by the local school district pursuant to section 771a, except for handicaped persons in residence at facilities operated by the Michigan school for the blind, the Michigan school for the deaf, the department of mental health or the department of social services. The references to section 774 in sections 590a and 590b are deemed to be made to this section.

SEC. 601a. The board of education of each local school district may provide, and for the 1973–74 school year and thereafter shall provide, by contract or otherwise for the room and board of handicapped persons who would otherwise be unable to participate in an appropriate special education program or service operated or contracted for by the local school district pursuant to section 771a, except those operated by the Michigan school for the blind, the Michigan school for the deaf, the department of mental health or the department of social services.

SEC. 601b. A board of education of a local school district shall not solicit, nor shall it seek, reimbursement from a handicapped person or person otherwise liable for the care of the handicapped person for any cost of a special education program attributable to the expense for room and board, except it shall have the right to reimbursement for room and board in such amount as can reasonably be afforded by such person and in accordance with rules promulgated by the state board.

SEC. 613 The board may authorize or order the suspension or expulsion from school of a pupil guilty of gross misdemeanor or persistent disobedience when in its judgment the interests of the school may demand it. If there is reasonable cause to believe that the pupil is handicapped, and the local school district has not evaluated the pupil in accordance with rules of the state board, the pupil shall be evaluated immediately by the intermediate district of which the local school district is constituent in accordance with section 298c.

SEC. 732. In the following cases, children shall not be required to attend the public schools:

(a) Any child who is attending regularly and is being taught in a private, parochial or denominational school which has complied with all the provisions of this act and teaches subjects comparable to those taught in the public schools to children of corresponding age and grade, as determined by the course of study for the public schools of the district within which such private, denominational or parochial school is located.

(b) Any child who is regularly employed as a page or messenger in either branch of the legislature during the period of such employment.

(c) Children under 9 years of age who do not reside within 2½ miles, by the nearest traveled road, of some public school. If transportation is furnished for pupils in the district, this exemption shall not apply.

(d) Any child 12 to 14 years of age while in attendance at confirmation classes conducted for a period of not to exceed 5 months in either of the years.

(e) Any child who is regularly enrolled in the public schools while in attendance at religous instruction classes for not more than 2 class hours per week, off public school property during public school hours upon written request of the parent, guardian or person in loco parentis in accordance with rules prescribed by the superintendent of public instruction.

SEC. 771a. (1) The board of a local school district may provide, and for the 1973–74 school year and thereafter shall provide, special education programs and services designed to develop the maximum potential of all handicapped persons in its district on record under section 298c for whom an appropriate educational or training program can be provided in accordance with the intermediate school district special education plan, in either of the following ways or a combination thereof:

(a) Operate the special education program or service.

(b) Contract with its intermediate school district, another intermediate school district, another local school district, an adjacent school district in a bordering state, the Michigan school for the blind, the Michigan school for the deaf, the department of mental health or the department of social services, or any combination thereof, for delivery of the special education programs or services, or with an agency approved by the state board of education for delivery of an ancillary professional special education service. The intermediate school district of which the local school district is constituent shall be a party to each contract even if it does not participate in the delivery of the program or service.

(2) A local school district contract for the provision of a special education program or service shall specifically provide for:

(a) Special education buildings, equipment and personnel necessary for the operation of the subject program or service.

(b) Transportation or room and board, or both, for persons participating in the programs or services as required under sections 601 and 601a.

(c) The contribution to be made by the sending local school district if the program or service is to be operated by another party to the contract. The contribution shall be in accordance with rules promulgated by the state board. This section shall be construed to allow operation of programs by departments of state government without local school district contribution.

(d) Any other matters which the parties deem appropriate.

(3) All programs and services operated or contracted for by a local district shall be in accordance with the intermediate school district's plan, established pursuant to section 298c.

(4) A local district may provide additional special education programs and services not included in or required by the intermediate district plan.

SEC. 722a. Special education personnel shall meet the qualifications and requirements set forth in rules promulgated by the state board of education.

SEC. 773a. Curriculum, eligibility of specific persons for special education programs and services and for each particular program or service, review procedures regarding the placement of persons in the programs or services, size of classes, size of programs, quantity and quality of equipment, supplies and housing, adequacy of methods of instruction and length and content of school day, shall be in accordance with rules promulgated by the state board relative to special education programs and services.

SEC. 780k. A local school district of any class or kind shall be governed by sections 601, 601a, 771a and all other sections of this act necessary to fully effectuate the purposes of those sections, notwithstanding the provisions of sections 21, 51, 101, 141, 187, 226, 351, 375 and any other provisions of law which are inconsistent with those sections or which would serve to defeat the purposes thereof.

SEC. 2. Sections 319a to 322a, 329 to 329b, 587a, 618 to 620, 747 to 753, 771, 772, 773, 774, 775, to 780j of Act No. 269 of the Public Acts of 1955, as amended and added, being sections 340.319a to 340.322a, 340.329 to 340.329b, 340.587a, 340.618 to 340.620, 340.747 to 340.753, 340.771, 340.772, 340.773, 340.774 and 340.775 to 340.780j of the Compiled Laws of 1948, are repealed.

SEC. 3. This amendatory act shall take effect July 1, 1972.

30. *Fraternities, Sororities, Secret Societies; Definitions; Declaration of Illegality* (M.C.L.A. 340.921)

It shall be unlawful for any pupil of the elementary school and the high school of the public schools or any other public school of the state comprising one or all of the 12 grades in any manner to organize, join or belong to any high school fraternity, sorority or any other secret society. A public school fraternity, sorority or secret society, as contemplated by this act, is hereby defined to be any organization whose active membership is composed wholly or in part of pupils of the public schools of this state and perpetuating itself by taking in additional members from the pupils enrolled in the public schools on the basis of the decision of its membership, rather than upon the right of any pupil who is qualified by the rules of the school to be a member of and take part in any class or group exercises designated and classified according to sex, subjects required by the course of study, or program of school activities fostered and promoted by the board and superintendent of schools and by the board and county superintendent of schools for all schools not employing a superintendent of schools. Every such fraternity, sorority and secret society as herein defined is declared an obstruction to education, inimical to the public welfare and illegal.

31. *Pregnant Students; Expelling or Excluding Prohibited* (M.C.L.A. 388.391)

A person, who has not completed high school, may not be expelled or excluded from a public school because of being pregnant.

32. *Pregnant Students; Withdrawal from Regular School Program* (M.C.L.A. 388.392)

A pregnant person who is under the compulsory school age may withdraw from a regular public school program in accordance with rules promulgated by the state board of education.

33. *Pregnant Students; Alternative Educational Program* (M.C.L.A. 388.393)

A local school district may develop and provide an accredited alternative educational program for persons who are pregnant and voluntarily withdraw from the regular public school program or a local school district may contract with the nearest intermediate school district offering an educational program required by this act. A local school district shall be reimbursed for these programs in accordance with section 12 of Act No. 312 of the Public Acts of 1957, as amended, being section 388.622 of the Compiled Laws of 1948.

34. *Pregnant Students; Rules* (M.C.L.A. 388.394)

The state board of education shall promulgate rules to implement this act in accordance with and subject to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Compiled Laws of 1948.

35. *School Teachers and Employees; Disclosing of Student Communications* (M.C.L.A. 600.2165)

No teacher, guidance officer, school executive or other professional person engaged in character building in the public schools or in any other educational institution, including any clerical worker of such schools and institutions, who maintains records of students' behavior or who has such records in his custody, or who receives in confidence communications from students or other juvenile, shall be allowed in any proceeding, civil or criminal, in any court of this state, to disclose any information obtained by him from such records or such communications; nor to produce such records or transcript thereof, except that any such testimony may be given, with the consent of the person so confiding or to whom such records relate, if such person is 21 years of age or over, or if such person is a minor, with the consent of his or her parent or legal guardian.

36. *Emancipation; Domicile* (M.S.A. 25.244)

(1) An emancipation occurs by operation of law:

(a) When a minor is validly married.

(b) When a person reaches the age of 18 years.

(c) During the period when the minor is on active duty with the armed forces of the United States.

(d) If a court of competent jurisdiction orders an emancipation in the best interests of the minor.

(2) An emancipation occurs by action of the parents when both parents or a surviving parent or a parent having exclusive rights of custody release their parental rights by written instrument or by conduct which clearly indicates intent to release their rights and such written instrument shall be filed with the county clerk in the county or counties where the parents reside.

(3) Abandonment by the parents is presumptive evidence of emancipation and relinquishment of parental rights.

(4) Emancipation by action of the parents does not occur if the minor is in fact dependent upon his parents for support.

(5) Emancipation by action of the parents or when minor is validly married may be revoked by agreement between the parents or surviving parent and the minor or by resumption of family relations inconsistent with the prior emancipation.

(6) An emancipated minor may acquire a domicile of his choice.

37. ***Smoking*** (M.S.A. 25.282)

Any person under 18 years of age who shall smoke or use cigarettes in any form, on any public highway, street, alley, park or other lands used for public purposes, or in any public place of business or amusement, may be arrested by any officer of the law who may be cognizant of such offense, and further, it shall be the duty of such officer upon complaint of any person and upon warrant properly issued to arrest such offenders and take them to the proper court. In case the offender is found guilty the court may impose a penalty in its discretion in the sum of not to exceed $10.00 or imprisonment in the county jail not to exceed five (5) days for each offense.

APPENDIX III

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III. Michigan Attorney General Opinions

A. LAW ENFORCEMENT ACTIVITIES IN SCHOOLS

SCHOOLS: Authority of boards of education to adopt rules concerning interrogation of school children by law enforcement officers.

ARRESTS: The right to make without a warrant.

The board of education of a school district, pursuant to authority vested in it by Sec. 614 of Act 269, P.A. 1955, as amended is authorized to adopt a rule or regulation permitting certain groups or persons, including law enforcement officers, to have access to school children on school property during school hours.

Law enforcement officers may be given access to school children on school property during school hours for the purpose of interrogation pursuant to a rule or regulation adopted by the board of education of a school district, subject to such conditions as the board of education in its discretion may reasonably impose.

Law enforcement officers are empowered to arrest a person without a warrant, including children, in the case of a felony where the officer has reasonable cause to believe that the person has committed a felony or a misdeameanor committed in the officer's presence. A rule of the board of education of a school district which would permit law enforcement officers to remove a student from the public schools only upon presentation of a warrant is not in accordance with law.

The law presumes that all law enforcement officers are reputable.

Children over the age of 15 years may be treated as adults for purpose of prosecution for crime in the discretion of the probate court. A rule or regulation which would require a school officer to be present during the interrogation of a school child over the age of 15 on school property during school hours would be reasonable.

No. 3537 September 8, 1961.

Dr. H. M. Blair, Secretary
Board of Education of the School District
of the City of Sault Ste. Marie
Sault Ste. Marie, Michigan

By Assistant Attorney General Krasicky.

The School District of the City of Sault Ste. Marie, by action of its Board of Education, has adopted the following policy:

> "No student may be interviewed on school property by a police officer or any other authority unless a school official is present at all times during the interview to protect the right of the juvenile. Likewise, no student shall be turned over to any legal authorities unless such persons shall possess a warrant, in which case, the parent will be notified immediately if it is possible."

This office has reviewed the aforesaid policy of the School District with the Superintendent of the Sault Ste. Marie Schools. You ask the following questions relative to this policy:

1. Is it permissible for police officers to interview students within the public schools if an adult is present to protect the right of the juvenile?
2. May the police authorities remove a student from the public schools for any purpose without presentation of a warrant?
3. Is it permissible for police officers under the law to interview juveniles within the public schools without an adult present to protect the right of the juvenile?
4. Is the School Board and the juvenile properly protected if a school official is present at the questioning?

Because the first two questions directly concern the policy adopted by the Board of Education of the School District of the City of Sault Ste. Marie, this office will consider them simultaneously.

Article XI, Sec. 1 of the Michigan Constitution, provides as follows:

> "Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."

Under Article XI, Sec. 9 of the Michigan Constitution, the people have entrusted the control of the schools in the legislature.

Act 269, P.A. 1955, as amended,[1] is known as the School Code of 1955. Section 614 of the school code provides as follows:

> "Every board shall have authority to make reasonable rules and regulations relative to anything whatever necessary for the proper

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[1] C.L.S. 1956 § 340.1 et seq.; M.S.A. 1959 Rev. § 15.3001 et seq.

establishment, maintenance, management and carrying on of the public schools of such district, including regulations relative to the conduct of pupils concerning their safety while in attendance at school or enroute to and from school."

The authority of school officials to adopt rules and regulations for the conduct of the schools has been reviewed by the Michigan Supreme Court in *Tanton v. McKenney*, 226 Mich. 245, where the expulsion of a student for violating a rule of conduct was upheld by the court.

A rule which would bar a student from school for a careless or negligent act relative to school property, in the absence of some willful or malicious act of detriment to the school, was held to be unenforceable and void in *Holman v. Trustees of School District No. 5, Township of Avon*, 77 Mich. 605.

In *Jones v. Cody*, 132 Mich. 13, the Michigan Supreme Court upheld as reasonable and not in restriction of parental authority over their children a rule that required children to proceed directly to their homes after school.

The law appears to be well settled that courts will review and void rules and regulations adopted by boards of education for the conduct of the schools only when the rules and regulations are unreasonable or arbitrary. *Cochrane v. Mesick Consolidated School District Board of Education*, 360 Mich. 390; *Coggins v. Board of Education of City of Durham*, (N.C.) 28 S.E. 2d 527; *Detch v. Board of Education*, (W.Va.) 117 S.E. 2d 138; *Gabrielli v. Knickerbocker*, (Cal.) 82 P. 2d 391.

It must follow that the legislature has reposed broad discretion in the board of education of a school district to adopt reasonable rules and regulations for the conduct of the schools. There can be no question that while a child is in school he is under the control of school authorities and subject to the reasonable rules and regulations adopted for the conduct of the school. *Jones v. Cody*, supra.

In the conduct of the school and the discharge of the duty imposed by the people to provide education as a means to promote good government and the happiness of the people, the board of education of a school district may adopt reasonable rules and regulations with regard to access to pupils during school hours of any proper outside group or persons, including law enforcement officers. The substance of a rule or regulation as to access to school children by law enforcement officers must be determined by the board of education of the individual school district.

There are approximately 1950 school districts in the state of Michigan, which vary from rural districts operating single room schoolhouses to large urban school districts with multiple buildings and thousands of pupils in attendance. The local circumstances will naturally differ in each school district. Consequently, it must be concluded that rules and regulations concerning access to children while in attendance at school by law enforcement officers will not be uniform in all school districts. Nor is there any requirement in the law that such rules be uniform, except within the territorial boundaries of the district, or the legislature, under plenary power granted to it by the people, would have prescribed a rule and regulation for all districts as it did in the case of banning membership of school children in secret societies under Section 921 of the School Code of 1955, supra. Such a uniform rule and regulation of student conduct was upheld by the Michigan Supreme Court in *Steele v. Sexton,* 253 Mich. 32.

The rule adopted by the Board of Education of the School District of Sault Ste. Marie, which would allow school children to be interrogated by law enforcement officers on school property during school hours only in the presence of a school officer, appears to be in accordance with law.

Similarly, a rule or regulation adopted by a school district permitting law enforcement officers to have access to school children on school property during school hours without any school officer in attendance during the interview would stand the test of reasonableness depending upon local circumstances.

In the final analysis the need for the rule or regulation and the nature of the rule allowing access to school children on school property during school hours by law enforcement officers for the purpose of interrogation rests in the sound discretion of the board of education of the school district, which is best familiar with the educational needs and circumstances of the school district.

In order to dispose of your basic inquiry it is necessary to consider the balance of the policy adopted by the board of education of your school district as it relates to the matter of arrest of school children based solely upon warrant, as indicated by your second question.

The law is well settled that persons, including children, are subject to arrest upon proper warrant and it follows that school authorities would be required to surrender a child in their custody upon the presentment of a proper warrant.

Law enforcement officers, under Section 15, Chapter IV, Act 175, P.A. 1927, as amended,[2] are permitted to arrest a person without a warrant in the case of a felony where the officer has reasonable cause to believe that the person including a minor child, has committed a felony, or for a misdemeanor committed in the officer's presence. *Odinetz v. Budds,* 315 Mich. 512. Thus, the law enforcement officer may arrest a child without a warrant where he has reasonable cause to believe the child has committed a felony or where the child has committed a misdemeanor in the officer's presence.

A rule of the board of education of a school district which would permit law enforcement officers to remove a student from the public schools only upon presentation of a warrant is not in accordance with the law. There can be no question that law enforcement officers have the same rights of arrest in connection with juveniles and children as they would have with all other persons.

Therefore, it is the opinion of the Attorney General that the board of education of a school district is without authority to adopt a rule that would allow a student to be removed from a public school by law enforcement officers only upon presentation of a properly executed warrant.

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[2] C.L. 1948 § 764.15; M.S.A. 1954 Rev. Vol. § 28.874.

In response to your third question, the legal reasoning which tested the rule adopted by your board of education applies equally to a rule of a board of education allowing access to school children in the custody of school authorities by law enforcement officers without a school officer being present during the interview. Such a rule would stand the test of reasonableness. Again it must be stressed that the adoption of the rule is in the sound discretion of the board of education of the district, based upon the needs and circumstances prevailing in the district.

Finally, in response to your last query, it is first necessary to study the relationship of parents, school authorities and law enforcement officers to the child and each other.

The law is well settled in Michigan that the power of parents to control their children is recognized by the law as a natural right. *In re Gould,* 174 Mich. 663. *Herbstman v. Shiftan,* 363 Mich. 64. The natural rights of parents to control their children is subject to judicial control only when the safety and interests of the child demand it. *Burkhardt v. Burkhardt,* 286 Mich. 526. When properly exercised, parental rights of control will be protected by the court. *In re Gould,* supra. *Herbstman v. Shiftan,* supra.

When children are in attendance at school, the relationship of the teacher to the child is one *in loco parentis,* that is, the teacher stands in the place of the parent. *Gaincott v. Davis,* 281 Mich. 515. At best the rights of school authorities over the child are limited and tenuous and must be confined to matters of conduct and discipline only. In *Guerrieri v. Tyson,* (Penn.) 24 A 2d 468, the court refused to extend the doctrine of *loco parentis* to the exercise of judgment by school authorities for the medical treatment of the pupil in the absence of an emergency or the needs of the child.

It must be concluded, therefore, that the primary duty and responsibility of the school is to educate the child, not to serve as the parent of the child. Thus, the board of education of a school district is empowered by the legislature to adopt reasonable rules and regulations as to the conduct and discipline of the child so that it may effectively discharge its primary responsibility of educating children. Only in the rare case will it be necessary for school authorities to be called upon to protect the personal welfare of children in their custody and to this end they may adopt reasonable rules and regulations as are necessary and proper.

If parents are to provide for their children as required by law, and school authorities are to furnish the education mandated by the people, the role of law enforcement authorities must be acknowledged and encouraged. The Michigan Supreme Court in *Leisure v. Hicks,* 336 Mich. 148, recognized that the orderly and efficient enforcement of law for the protection of our society requires the prompt arrest and lawful detention of those persons honestly and reasonably believed to be guilty of crime. Delay in arrest may endanger the public by permitting such persons to remain at large. Consequently law enforcement officers must have reasonable and prompt access to persons having information about the commission of crimes if they are to discharge their responsibility to protect society.

The variety of circumstances in dealing with juveniles involves many diffierent decisions. Take, for example, the case of the child of fifteen who has been part of a group which has robbed a bank, kidnapped the cashier, and left him injured in the abandoned car. In this example, not to permit the police to take the child out of class and interrogate him forthwith would be manifestly ridiculous.

On the other hand, take the example of the eight-year-old boy who is accused by a neighbor of pilfering. In this example, the officer would be unjustified in interrupting the routine of the school.

If your last question is premised upon the proposition that all children must be protected from all law enforcement officers, there appears to be no basis in fact or law for such a sweeping generalization. On the contrary, the presumption obtains that all law enforcement officers are reputable and truthful men, not merely that some of them possess these virtues. *People v. Schoos,* (Ill.) 78 N.E. 2d 245. Officers of the law, in the absence of a showing to the contrary, are presumed to have done their duty. *Payne v. State,* (Okla.) 276 P. 2d 784.

It follows, therefore, that there is no basis to assume that all law enforcement officers will conduct themselves improperly and will in any manner violate the rights of children. As protectors of the rights of society, the law presumes that law enforcement officers will zealously observe the civil rights of children.

Where school authorities have reason to believe that the rights of school children in their custody would best be served by having a school officer present during the interview of the child by a law enforcement officer, a reasonable rule to that effect may be adopted by the board of education of the school district. Again it must be stressed that it is impossible for me to advance a hard and fast rule that will apply in all cases. School authorities are best familiar with local circumstances and rules and regulations adopted by them will be abrogated by courts only if they are basically unreasonable or arbitrary.

In this regard it is necessary to understand that although children may commit acts in violation of the law, they cannot all be charged, tried and punished as criminals. The legislature has conferred exclusive jurisdiction over children under the age of seventeen years in the juvenile division of the probate court, pursuant to Section 2 of Chapter XIIA of the Probate Code of 1939.[3]

Under Section 1 of the chapter, the legislature has specified that proceedings under the chapter shall not be deemed criminal in nature. The Michigan Supreme Court has held that juvenile court proceedings are not criminal proceedings. *Robison v. Wayne Circuit Judge,* 151 Mich. 315.

There can be no question that the legislature can so provide for when it considers criminal acts of children to be non-criminal, it is not seeking to punish a malefactor, but rather to salvage a boy or girl who is in danger of becoming a malefactor. *People v. Lewis*, (N.Y.) 183 N.E. 353.

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[3] Act 288, P.A. 1939, as amended, C.L. 1948 § 712 A.1 et seq.; M.S.A. 1959 Cum. Supp. § 27.3178(598.1) et seq.

Where a person is charged with a criminal act and it is ascertained that the person is under the age of seventen years, the law requires that the proceeding be transferred forthwith to the juvenile division of the probate court under Section 3 of Chapter XIIA for proceedings thereunder. It should be noted that where a child is over the age of fifteen years and is charged with a felony, the probate judge may, in his discretion, waive jurisdiction over the child so that he may be tried in a court of competent criminal jurisdiction as an adult in accordance with Section 4 of Chapter XIIA.

Where the juvenile division of the probate court retains jurisdiction over a child who may have committed acts in violation of the law, the court is charged under Chapter XIIA of the Probate Code of 1939, after notice and hearing to dispose of the case as shall be appropriate for the best interest of the child and society .

The adjudication of a child as a delinquent upon an investigation resting primarily on an admission of a child that he admitted guilt of a larceny was upheld in *In re Broughton*, 192 Mich. 418. Similarly, an adjudication of delinquency based upon a written confession of a twelve year old child after he had been warned by the law enforcement officer that anything he said could be used against him was upheld in *Robinson v. State*, (Tex.) 204 S.W. 2d 981.

It should be observed that in dealing with the juvenile, the constitutional safeguards guaranteed to a child are to be determined by the requirements of due process of law and fair treatment. The child is no less entitled to these safeguards than an adult and, in fact, because of his tender years may be entitled to even greater safeguards. What constitutes due process of law must be determined by the facts and circumstances in each case. Circumstances may well require notification of the parents before interrogation of the child. See *Pee v. United States*, 274 Fed. 2d 556, where the entire problem was exhaustively reviewed. In a delinquency proceeding conducted in a juvenile court, failure to advise the child and his parents of the right to counsel was held to be a denial of due process of law. *White v. Reid*, 126 F. Supp. 867; *In re Poff*, 135 F. Supp. 224, *Shioutakon v. District oj Columbia*, 236 F.2d 666. See, for example, *Fairness to the Juvenile Offender*, 41 Minn. Law Rev. 547 (1957, April), especially the section on "Fair Treatment Before Trial" beginning at page 551, and references therein cited.

Where a child is over the age of fifteen but under seventeen, it is clear that he may be tried as an adult for a charge of committing a felony, in the discretion of the juvenile division of the probate court. Consequently, such a child is afforded all the safeguards guaranteed to an adult by the federal and state constitutions.

Although the Michigan rule as stated in *People v. Sharac*, 209 Mich. 249, holds that voluntary statements made by an accused are admissible where no warning was given that such statements could be used against him, the better practice to follow in regards to children between the age of fifteen and seventeen is to warn them that statements made by them can be used against them as set down by the federal court in *Pee v. United States*, supra.

From this analysis I conclude that a board of education, in its discretion, may adopt a rule or regulation, allowing access to school children over the age of fifteen years by law enforcement officers only in the presence of a school official, who would be available to advise the child if requested and to ascertain that the child was informed of and understood his rights under the law.

In summary, I conclude:

The board of education of a school district is vested with broad discretion in adopting a rule and regulation permitting certain groups or persons, including law enforcement officers, to have access to children on school property during school hours. The substance of the rule or regulation is in the sound judgment and discretion of the board of education.

A rule or regulation allowing access to school children by law enforcement officers, subject to certain reasonable conditions, will not be abrogated by a court unless the rule or regulation is unreasonable or arbitrary.

Law enforcement officers are empowered to arrest persons, including children, upon a lawful warrant or without a warrant if the officer has *reasonable cause to believe* that the person, including a child, has committed a felony or for a misdemeanor committed in the presence of the officer. A rule that would allow a child to be removed from school only upon a proper warrant is not in accordance with law.

The law presumes that law enforcement officers are reputable persons and will do their duty. School authorities should cooperate with law enforcement officers and should encourage children to respect lawfully constituted authority.

Children over the age of fifteen years may be treated as adults for purpose of prosecution of crime in the discretion of the probate court. A rule that would require a school officer to be present during the interrogation by law enforcement officers of a school child over the age of fifteen on school property during school hours would be reasonable.

PAUL L. ADAMS,
Attorney General.

B. AUTHORITY TO SUSPEND RULE-MAKING POWERS

EDUCATION, STATE BOARD OF: Rule-making power.
SCHOOL DISTRICTS: Power of boards of education to suspend or expel students.

State Board of Education is authorized to promulgate rules prescribing the procedural safeguards to be employed by local school boards in the process of suspending or expelling students.

State Board of Education may review decisions of local boards concerning suspensions and expulsion for misconduct and may adopt rules prescribing the manner for taking such appeals.

Opinion No. 4705 July 7, 1970.

Dr. John W. Porter
Acting Superintendent of Public Instruction
Department of Education
Lansing, Michigan

You have requested my opinion on two questions which may be phrased as follows:

1. Does the State Board of Education possess the authority, either by constitutional grant or legislative enactment, to adopt rules governing the procedural safeguards to be employed by school boards in suspending or expelling students for misconduct?
2. Does the State Board of Education possess the authority, either by constitutional grant or legislative enactment, to review the decisions of school boards concerning student suspensions and expulsions for misconduct?

In answering your first question, it is necessary to examine Article VIII, Section 3 of the 1963 Michigan Constitution which provides:

> "Leadership and general supervision over all public education, including adult education and instructional programs in state institutions, except as to institutions of higher education granting baccalaureate degrees, is vested in a state board of education. . . ."

A unanimous Michigan Supreme Court has held that, pursuant to Article VIII, Section 3 of the 1963 Michigan Constitution, the State Board of Education has the *constitutional* authority and responsibility to promulgate rules specifying the required length of a school day for elementary and secondary students. *Welling v. Livonia Board of Education* (1969), 382 Mich 620. In so holding, the Court recognized the authority of the legislature to maintain and support a system of free public schools, as set forth in Article VIII, Section 2 of the same document, and as implemented by the school code of 1955, being Act 269, PA 1955, as amended, MCLA § 340.1 et seq; MSA 1968 Rev Vol § 15.3001 et seq.

It is clear that the State Board of Education, pursuant to Article VIII, Section 3, has constitutionally conferred rule-making power. *Welling,* supra. In addition, the legislature has conferred rule-making power on the State Board of Education.

In Act 287, PA 1964, as amended, being MCLA §388.1001 et seq; MSA 1968 Rev Vol §15.1023(1) et seq, the legislature has provided for the organization and functions of the State Board of Education. Section 9 of that statute provides:

> "The state board of education has leadership and general supervision of all public education, including adult education and instructional programs of the state institutions, except as to institutions of higher education granting baccalaureate degrees. . . ."

Section 15 of the same act provides:

> "The state board of education shall prescribe rules and regulations that it deems necessary to carry out the provisions of this act . . ."

Thus, the legislature has, in plain and unambiguous terms, conferred rule-making upon the State Board of Education to implement its general supervisory power over public education. The State Board of Education may adopt and promulgate rules governing the procedural safeguards to be employed by school boards in suspending and expelling students for misconduct.

Section 731 of Act 269, PA 1955, as amended, supra, compels parents of children between the ages of 6 and 16 years to send such children to the public schools with exceptions not here pertinent. In Section 740 of the same statute the legislature has imposed criminal penalties for violations of the compulsory education requirements. Section 356 of the same act provides that all persons of requisite age have an equal right to attend school in the school district where they reside. Thus, it is clearly the public policy of this state that children attend school and that children have an equal right to such attendance.

This public policy is modified by Section 613 of Act 269, PA 1955, as amended, supra, which provides:

> "The board may authorize or order the suspension or expulsion from school of any pupil guilty of gross misdemeanor or persistent disobedience, or one having habits or bodily conditions detrimental to the school, whenever in its judgment the interests of the school may demand it . . ."

Further, Section 614 of the same statute authorizes boards of education to make reasonable rules and regulations necessary for the proper management of the public schools. The Michigan Supreme Court has ruled that students may be suspended or expelled for gross misconduct, not amounting to criminal conduct, and for persistent disobedience of the reasonable rules of the school. *Holman v. Trustees of School District No. 5, Township of Avon* (1889), 77 Mich 605, 608, 609.

In Sections 613 and 614 of Act 269, PA 1955, as amended, supra, the legislature has authorized school boards to make reasonable rules necessary for the management of the schools and to suspend or expel students for persistent disobedience of such reasonable rules or for other misbehavior constituting gross misconduct. These statutory sections are silent on the content of procedural rules applicable to the process of student suspension or expulsion. However, the statutory grant of authority contained in Sections 613 and 614 obviously carries with it the authority to adopt procedural rules relating to the process of student suspension or expulsion.

Every word of a statute must be given effect, if possible, so that no portion will be inoperative. *King v. Second Injury Fund* (1969), 382 Mich 480, 492. In addition, repeals by implication are not permitted if, by any reasonable construction, the two statutory provisions may be reconciled so that each provision serves some purpose. *Valentine v. Redford Township Supervisor* (1963), 371 Mich 138, 144.

These statutory provisions may be harmonized in the following manner. Any procedural rules promulgated by the State Board of Education to effectuate its general supervisory rule-making power, establish a minimum standard of procedural due process and, to that extent, are binding upon school boards in the process of student suspensions and expulsions for misconduct. However, boards of education, under Sections 613 and 614 of Act 269, PA 1955, as amended, supra, may adopt procedural rules that afford greater procedural safeguards if they so desire. Moreover, in the absence of procedural rules by the State Board of Education on any given aspect of procedure, the rules adopted by the school board are controlling.

Your second question concerns whether the State Board of Education, pursuant to either the Michigan Constitution or statute, is authorized to review the decisions of school boards concerning student suspensions or expulsions for misconduct. It is clear that the State Board of Education has constitutionally conferred power in the exercise of its general supervision over public education to review the decisions of local school boards concerning the suspension or expulsion of students. *Welling*, supra. Further, the authority to review such decisions has been reposed in the State Board of Education by legislative enactment.

In Sections 9 and 15 of Act 287, PA 1964, as amended, supra, quoted above, the legislature has declared that the State Board of Education has general supervision over public education and authorized the State Board of Education to prescribe rules it deems necessary to carry out the provisions of the statute. Pursuant to these statutory sections, the State Board of Education may review decisions of school boards on suspensions and expulsions for misconduct under Section 613 of Act 269, PA 1955, as amended, supra, and, to that end, may adopt rules prescribing the manner for taking such appeals. In this way the State Board of Education may exercise its power of general supervision in the area of student suspensions and expulsions for misconduct and effectuate any procedural rules it may adopt in this area.

However, in the adoption of rules authorizing appeals from school board decisions, it must be observed that, pursuant to Section 613 of Act 269, PA 1955, as amended, supra, school boards have discretionary authority in the matter of suspending or expelling students for misconduct. In reviewing discretionary acts of school boards, courts do not substitute their judgment for that of the school officials. Rather, review is limited to ascertaining whether the school board has abused its discretion. *Hiers v. Detroit Superintendent of Schools* (1965), 376 Mich 225, 234, 235. Here, also, the *general* supervisory power of the State Board of Education in the area of reviewing student suspensions and expulsions by school boards on the merits should be used to ascertain whether the local board of education has abused its discretion in either its finding of student misconduct or its imposition of the penalty for such misconduct.

In summary, it is the opinion of the Attorney General that, the State Board of Education may promulgate rules prescribing the procedural safeguards to be employed by local school boards in the process of suspending or expelling students for misconduct under Section 613 of Act 269, PA 1955, as amended, supra. Further, the State Board of Education may review decisions of local school boards concerning student suspensions or expulsions for misconduct, and to that end, may adopt rules prescribing the manner for taking such appeals.

FRANK J. KELLEY
Attorney General

C. LIMITATION ON WITHHOLDING OF DIPLOMA

SCHOOLS: Board of education—authority to withhold diploma.

The board of education of a school district is without authority, as a disciplinary measure, to withhold a high school diploma from a student who has fulfilled all of the academic requirements for graduation.

No. 3545 August 29, 1960.

Hon. Lynn M. Bartlett
Superintendent of Public Instruction
The Capitol
Lansing, Michigan

By Assistant Attorney General Krasicky.

You adivse this office that a number of students, having satisfactorily completed their academic work in the high school of a school district, attended graduation exercises, where dummy diplomas were publicly conferred. Later, the senior class made a trip and several members of the class violated rules as to drinking and other like misconduct and on the basis of this, the members of the board of education have refused to sign their diplomas.

Based upon these facts, you ask the following question:

> "Does a board of education have authority, as a disciplinary measure, to withhold the high school diploma of a student who has fulfilled all of the academic requirements for graduation?"

The people have reposed the control of the school in the legislature, pursuant to Article XI, § 9 of the Constitution.

This authority over education extends not only to the division of territory of the state into school districts, but to the regulation of the powers and duties of local boards of education that are created to operate school districts *Jones v. Grand Ledge Public Schools,* 340 Mich. 1.

The law is well settled that school districts have only such power as is granted to them by the legislature, *Jacox v. Board of Education,* 293 Mich. 126.

Act 269, P.A. 1955, as amended, is known as the School Code of 1955. Section 614 of the School Code of 1955 provides as follows:

> "Every board shall have authority to make reasonable rules and regulations relative to anything whatever necessary for the proper establishment, maintenance, management and carrying on of the public schools of such district, including regulations relative to the conduct of pupils concerning their safety while in attendance at school or en route to and from school."

By section 613 the legislature has expressly empowered the board of education of the school district to order the suspension or expulsion from school of any pupil guilty of gross misdemeanor or persistent disobedience, when in its judgment the interest of the school may demand it.

The right of a board of education of a school district to enact rules and regulations for the behavior of students on school grounds as well as away from school has been upheld by the Michigan Supreme Court in *Jones v. Cody,* 132 Mich. 13, the Court holding as reasonable a rule that required pupils to go directly home at the close of school.

The legislature has, by express grant, enabled the board of education of the school district to withhold credits or not to graduate any person who has knowingly violated the provisions of Chapter 28, Part 2 of the School Code of 1955 as amended, being sections 921-924, which make it unlawful for any student to organize, join or belong to any high school fraternity, sorority, or other secret society.

In a divided opinion, the Michigan Supreme Court upheld the refusal of the board of education to graduate a student that had willfully joined a high school fraternity in *State v. Sexton* 253, Mich. 32, under a comparable statutory authority. Of interest is the dissenting opinion of Mr. Justice Potter concurred in by two justices, which held that the credits earned by a pupil are valuable. As property rights, they cannot be taken away from him without violating the Constitution of the State and the Fourteenth Amendment of the Constitution of the United States.

In the construction of statutes, the Michigan Supreme Court has held that where the legislature has enumerated the powers of its creature in a particular field, powers that are not enumerated are withheld. *Sebewaing Industries v. Village of Sebewaing,* 337 Mich. 530.

It follows that the provisions of Chapter 28, Part 2 of the School Code of 1955 must be construed to withhold from the board of education of any school district the right to deny credits or not to graduate any student who, after satisfactorily completing his academic studies, violates other rules and regulations of the school district.

This ruling finds support in the decision of the Iowa Supreme Court in

Valentine v. Independent School District of Casey, 183 N.W. 434, where the Court held that a student who had satisfactorily completed the prescribed course of study in the high school could not be denied a diploma for the reason that the student refused to observe certain requirements relative to the graduation exercises, holding that a student who has honorably passed through the prescribed course of study is entitled to a diploma. The Court ruled further that the board of education was obligated under law to issue the diploma to the student.

Mandamus will lie to compel a school officer to sign a diploma. *Hamlett v. Reid* (Ky.), 177 S.W. 440.

Therefore, it is the opinion of the Attorney General that a board of education of a school district is without authority, as a disciplinary measure to withhold the high school diploma of a student who has fulfilled all the academic requirements for graduation.

PAUL L. ADAMS
Attorney General

D. SCHOOL REGULATION OF GROOMING

November 27, 1972

Dr. John W. Porter
Superintendent of Public Instruction
Department of Education
Lansing, Michigan 48913

Dear Dr. Porter:

You state that the State Board of Education, by formal action, requested you to seek my opinion "as to whether local boards of education have the legal right to refuse education to students because of their dress style or their hair style." You further state that the opinion request is "predicated on State Board of Education discussion that assumes that a student's dress, grooming, or appearance has not materially disrupted the learning process, is not obscene within standards set forth by the U.S. Supreme Court, or is not a real and present danger to the health of other persons in the school community."

You appear, therefore, to ask the following question:

> May the board of education of a school district suspend or expel a student because of his (or her) hair style or dress style where the student's dress, grooming, or appearance has not materially disrupted the learning process, is not obscene within the standards set forth by the U.S. Supreme Court, or is not a real and present danger to the health of other persons in the school community?

The legislature has vested in the boards of education of school districts not only the authority to make reasonable rules and regulations relative to the conduct of pupils, but also the authority to suspend or expel for persistent disobedience thereof. MCLA 340.614; MSA 15.3614; MCLA 340.613; MSA 15.3613.

In discussing these provisions in *Davis v. Ann Arbor Public Schools*, 313 F Supp 1217 (ED Mich. 1970), Judge Talbot Smith said:

> "The qualification imposed by law upon the above is that the authorities act neither arbitrarily nor capriciously (citations omitted). The schools deal with increasing numbers of students from all walks of life. The problems presented to the various schools differ widely. Consequently their powers in these areas are plenary, subject only to the qualifications we have noted. They must not only provide a suitable environment for study, and for relaxation, but must also uphold and protect the authority reposed in the teachers in the institution. Without these powers they have no power to guarantee the attainment of the education entrusted to them.
>
> Thus it is that the school authorities may and do formulate rules and regulations thought necessary or desirable for the maintenance of an orderly program of classroom learning and conduct. In so doing they have a wide latitude of discretion, subject only to the restriction of reasonableness. And so it is, also, that the courts do not rule upon the wisdom of the rules, or their expedience, but merely, as a substantive matter, when in issue, whether they are a reasonable use of authorities' power and discretion to maintain order and decorum by all appropriate means, including suspension and expulsion." page 1226.

Although the subject has not been considered by the Michigan appellate courts,* during the past several years the matter of school district rules relating to hair and dress styles, particularly hair, has been the subject of much litigation in the federal courts. The status of this litigation is summarized in *Stull v. School Board of the Western Beaver Junior-Senior High School*, 459 F2d 339 (CA 3, 1972), as follows:

> "In its opinion in *Massie v. Henry*, 445 F2d 779, filed February 2, 1972, the Fourth Circuit joined the First, Seventh, and Eighth Circuits in holding regulations limiting the length of hair invalid, at least in the absence of persuasive reason and persuasive proof to support their promulgation and enforcement. The Fifth, Sixth, Ninth and Tenth Circuits, on the other hand, have refused to interfere with school regulations that prohibit long hair styles, essentially on the basis that the right to select of one's hair is too insubstantial to constitute a right protected by the federal Constitution and therefore to warrant federal Court consideration. On six occasions now the Supreme Court has denied certiorari, and on three of these strong dissents have filed." (footnotes omitted) pp 342–343.

In *Stull*, the Court of Appeals for the Third Circuit cast its lot with the Court of Appeals for the First Circuit.

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* In March 1974, the Michigan Court of Appeals for the 2nd Division rendered an opinion invalidating a grooming regulation of the Lake Shore School District as being unreasonable.

As indicated in *Stull*, the outcome of the multitudinous cases depends primarily upon the deciding court's view of the constitutional protection afforded the individual in his choice of hair style. Where the Court holds as a matter of law that hair length is constitutionally protected, even though it expresses nothing more than individual taste, the school district's rule is held to be unconstitutional because of the substantial burden of justification placed upon the promulgator of the rule. Illustrative of this type of case is *Breen* v *Kahl*, 296 F Supp 702 (WD Wis, 1969), aff'd 419 F2d 1034 (CA 7, 1969), cert den 398 US 937 (1969).

The other approach is found in cases like *Olff* v *Eastside Union High* School District, 445 F2d 932 (CA 9, 1971), rev'g 305 F Supp 557 (ND Cal, 1969), cert den 404 US 979 (1972). These cases hold that there is a presumption of constitutional validity in the rules adopted by boards of education of school districts relating to hair and dress styles; that unless and until the complaining party shows that the rule has no reasonable connection with the operation of the school system—that the rule is not reasonably calculated to maintain discipline, not conducive to education and not proper in the maintaining of proper standards of decorum and a wholesome academic environment—no constitutional impairment has been established. This is the approach of the Court of Appeals for the Sixth Circuit in which jurisdiction Michigan is located. *Jackson* v *Dorrier*, 424 F2d 213 (CA6, 1970), cert den 400 US 850 (1970). *Gfell* v *Rickelman*, 441 F2d 444 (CA 6, 1971), aff'g 313 F Supp 364.

Generally, this is also the approach of the state courts. In *Leonard* v *School Committee of Attelboro*, 394 Mass 704; 212 NE2d 468 (1965), the court said:

> "We are of opinion that the unusual hair style of the plaintiff *could* disrupt and impede the maintenance of a proper classroom atmosphere or decorum. This is an aspect of personal appearance and hence akin to matters of dress. Thus as with any unusual, immodest or exaggerated mode of dress, conspicuous departures from accepted customs in the matter of haircuts *could* result in the distraction of other pupils. (Emphasis supplied) page 472.

At least one United States District Court has determined that hair cases do not present a substantial federal question and, accordingly, should be left to the state and its courts. *Alberda* v *Noell*, 322, F Supp 1379 (ED Mich 1971), Roth, J.

The legislature in vesting the boards of education of school districts with the authority to adopt rules and regulations with regard to student conduct imposed a standard of reasonableness. This is the equivalent of the test applied in *Leonard* v *School Committee of Attelboro*, supra, and in the two Court of Appeals for the Sixth Circuit cases discussed above.

Further, it should be noted that what is reasonable is determined by the facts and circumstances of a particular case, which may vary vastly from school district to school district and even, occasionally, within a given school district. *Davis*, supra. This, at least, is one explanation as to why the rule-making power in this regard was granted to the boards of education of school districts, in the absence of any rule by the state board of education.

In summary, research has failed to disclose any decisions by Michigan's appellate courts concerning student hair and dress styles.* The federal appellate courts are sharply split on the question of the validity of school board regulations governing the length of hair and the United States Supreme Courts has denied certiorari in the long hair cases. At the present time, the law applicable to Michigan's school districts is that enunciated by the United States Court of Appeals for the Sixth Circuit which includes the State of Michigan within its jurisdiction.

Based on the decisions of the United States Court of Appeals for the Sixth Circuit, boards of education may adopt rules and regulations relating to student hair and dress styles and exclude from school students who disobey such rules and regulations, in the absence of a showing that such rules and regulations are not reasonably related to valid school purposes including maintaining school discipline, providing an academic environment free from disturbance and disruption, promoting student safety or other valid educational purposes. *Jackson* v *Dorrier, supra; Gfell* v *Rickelman*, supra. Under the rational basis test enunciated by the Court of Appeals for the Sixth Circuit, there must be some reasonable relationship between the hair or dress rule in question and the furtherance of valid school purposes by the board of education. However, the Court of Appeals for the Sixth Circuit has not limited the enforcement of hair and dress rules to the three categories outlined in your question.

FRANK J. KELLEY
Attorney General

E. FREE PUBLIC EDUCATION

MEMORANDUM

To: State Board of Education August 12, 1970

From: Eugene Krasicky
Assistant Attorney General

Re: Scope and application of the Michigan Supreme Court decision in Bond, et al v. The Public Schools of the *Ann Arbor School District, opinion issued July 17, 1970.*

Introduction

In the *Bond* case, the Michigan Supreme Court unanimously held that the provisions of Article VIII, Section 2 of the 1963 Michigan Constitution, commanding the legislature to ". . . maintain and support a system of free public elementary and secondary schools . . ." included free textbooks and school supplies. This decision has prompted many requests concerning its scope and application to a variety of charges currently imposed in one or more public school districts. This memorandum will provide clarification of the controlling law although it must be observed that it is virtually impossible to anticipate all the potential questions in the area of charges and fees.

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* See earlier caviat

I. MATTERS ADJUDICATED IN *Bond*

A. *General or Registration Fees*

In *Bond*, the Circuit Court held the general fees, which were referred to as registration fees, invalid under Article VIII, Section 2 of the 1963 Michigan Constitution. The Supreme Court granted the refund of general fees collected after commencement of the suit, thus confirming the holding of unconstitutionality. Thus, it is crystal clear that school districts may not impose any general fees or registration fees.

B. *Materials tickets charges or course fees*

In *Bond*, the Circuit Court held the materials tickets charges, referred to as course fees, invalid under Article VIII, Section 2. These fees were paid by each child, prior to taking certain courses such as industrial art, home economics and art, to pay for the cost of materials used in the course. The Circuit Court denied the requested refund of these fees, as did the Court of Appeals, although the Court of Appeals affirmed the basic holding of the trial judge as to the invalidity of charging the fee. This issue was not raised in any way in the Supreme Court. Thus, the conclusion is compelled that school districts may not impose any course fees or materials tickets charges.

In this regard, it should be noted that in OAG No. 4376, 1963–64, pp. 484–86, it was held that, under Article VIII, Section 2 of the 1963 Michigan Constitution, school districts were barred from charging either registration fees or course fees. Thus, the decision in *Bond* on these items is hardly a new development in the law affecting school districts.

C. *Interscholastic Athletic Fee*

The Circuit Judge held the fees for participation in interscholastic athletic activities unlawful, under MSA 1968 Rev Vol §15.3788, for the reason that defendant's official policy did not take into account those students who could neither pay the fee nor earn it. No appeal was taken on this issue by either side.

D. *Textbooks and school supplies*

The trial judge and the Court of Appeals held that Article VIII, Section 2 does not include *free textbooks and school supplies*. The Court of appeals specifically ruled that the word "free" employed therein was not to be equated with the words "without cost or charge." See (1969) 18 Mich App 506, 512. The Supreme Court, at p. 6, expressly reversed that ruling.

However, the Supreme Court, at pp. 6–8, clearly indicated that the question still remains as to what is "free." Textbooks and school supplies are free only because:

> "Applying either the 'necessary elements of any school's activity' test or the 'integral fundamental part of the elementary and secondary education' test, it is clear that books and school supplies are an essential part of a system of free public elementary and secondary schools." p. 8.

Thus, the holding on these questions compels the conclusion that school districts must provide free textbooks and school supplies. However, the rationale of the holding clearly indicates that not every aspect of public elementary and secondary education is free.

The opinion in *Bond*, supra, does not draw any distinction between required and elective courses. Further, the decision is not based upon whether the cost of the textbook or school supply is large or small. Rather, the decision is premised upon the idea that textbooks and school supplies are essential to elementary and secondary education. Thus, the decision is given meaning, in concrete circumstances, by reference to the required items in the curriculum of the various public school districts.

The unanimous holding in *Bond* precludes any rental fee for textbooks or any requirement that students purchase their textbooks from private sources. This holding also prohibits any charge for such required instructional materials as work books, weekly readers or other required magazine subscriptions. These items, to the extent they are required for use in the classroom curriculum, must be provided free of charge by the school district.

The decision in *Bond* also means that school districts must provide, without charge, such school supplies as paper, pencils and crayons together with whatever other supplies are required for use in classroom activities. This would also include the materials to make whatever projects are necessary to meet the course requirements in such classes as shop, industrial education, home economics, art and drafting. In addition, musical instruments must be provided free, on a reasonable basis, to the extent that they are required for use by qualified students enrolled in curricular music courses who do not voluntarily provide their own instruments.

A towel fee may not be imposed in connection with physical education courses. Also, lock and locker fees for usage during the school day for the purpose of storing books, supplies and clothing are prohibited. In this context, these items are necessary elements of the school's curricular activity.

II. Other Types of Fees and Charges in Light of the Division in *Bond*

A. *Fees for extracurricular activities*

In Webster's Seventh New Collegiate Dictionary, p. 296, the word "extracurricular" is defined, in substance, as school activities outside the scope of the regular curriculum that carry no academic credit. The distinction between curricular and extracurricular activities has previously been recognized by the Michigan Supreme Court in the case of *Cochrane v. Mesick Consolidated School District Board of Education* (1960), 360 Mich 390. In *Cochrane*, supra, Justice Kavanagh, writing for affirmance, in an opinion concurred in by two other justices, stated the following:

> ". . . Football contests between schools are extracurricular in nature. The right to provide such activities is clearly recognized. Constitutional provisions and statutes giving the right to receive education and physical training cannot properly be said to include interscholastic sports as a necessary requirement of education. . . ." (p. 418)

In Paulson, et al v. Minidoka County School District No. 331, et al (1970), 46[illegible] 2d 935, the Idaho Supreme Court ruled that optional social and other extracurrricular activities were not necessary elements of a public school education. Thus, the Court concluded that such activities need not be provided free of change under the Idaho Constitution.

Thus, based upon the language quoted above in *Cochrane*, supra, together with the ruling in *Paulson*, supra, and the rationale employed in the *Bond* case that only necessary or fundamental aspects of public education must be provided free, it is concluded that voluntary extracurricular activities need not be provided free of charge under Article VIII, Section 2 of the 1963 Michigan Constitution. Consequently, such items as fees for participation in interscholastic athletic activities, admission fees to school athletic contests, dances or plays, school club or class dues, and charges for school yearbooks or caps and gowns, are constitutionally permissible.

However, they are only permissible to the extent that participation in such activities is optional with the student outside the regular curriculum. Any activity in which students are graded or evaluated and academic credit is given, or any activity in which participation is required for obtaining a diploma, does not fall within the phrase "extracurricular activity" as employed herein.

Moreover, it should be observed that fees for extracurricular activities are subject to appropriate statutory regulations. For example, the legislature has chosen to regulate the charging of insurance fees for participation in interscholastic athletes. (See MSA 1968 Rev Vol §15.3788). Further, fees for student activity cards designed to cover the cost of various extracurricular activities in a lump sum are only permissible on a voluntary basis. This type of fee may not be imposed generally upon all students regardless of whether they choose to participate in the extracurricular activities. *Paulson*, supra. Further, any sanctions for failure to pay reguired fees for extracurricular activities may only relate to participation in the specific extracurricular activity for which the fee was not paid.

B. *Charges for damage or loss of school property and refundable deposits*

The decision in *Bond* obviously did not create any right in students to abuse or lose the public property of a school district. Pursuant to MSA 1968 Rev Vol § 15.3578, boards of education may make and enforce rules and regulations for the preservation of school district property. Further, pursuant to MSA 1968 Rev Vol § 15.3886, boards of education may establish rules and regulations for the careful use and return of textbooks. Thus, it is clear that boards of education may charge students for damage to books and supplies, over and above ordinary wear and tear, and for the loss of books and supplies.

In this regard, there is also substantial support for the proposition that boards of education may impose *reasonable refundable* deposits to cover damage to textbooks over and above ordinary wear and tear. *Segar, et al v. Board of Education of the School District of the City of Rockford* (Ill. 1925), 148 NE 289, and *Paulson*, supra, at page 938, Footnote 8. Such deposits, if both reasonable and refundable, would also be permissible for school supplies of substantial value that are not consumable items. Any required deposit should not exceed several dollars in amount. Further, provision must be made for those children unable to pay the deposit in a manner that is reasonably calculated to protect them from embarrassment. This can best be done through contact with parents, rather than children, in determining inability to pay, whenever possible.

Finally, it should be observed that it is the school officials who determine the quality and quantity of school supplies, such as paper and pencils, that are reasonably required for use by the pupil for a given length of time. Also, any pupil who voluntarily decides to bring his own school supplies may do so.

C. Miscellaneous items not covered under the Bond decisions

The express language of Article VIII, Section 2, relating to elementary and secondary education, obviously does not include adult education courses offered by the public schools. Also, during the oral presentation of this cause before the Supreme Court, it was stated, in response to questions from the bench, that no claim was being made that Article VIII, Section 2 included free food or clothing. Consequently, the opinion in *Bond* cannot be read as requiring either free school lunches or clothing under Article VIII, Section 2 of the 1963 Michigan Constitution.

APPENDIX IV

IV. State Guidelines or Statutes Governing Student Conduct

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IV. State Guidelines or Statues Governing Student Conduct

A. MICHIGAN GUIDELINES ON STUDENT RIGHTS AND RESPONSIBILITIES

foreword

There is no doubt that during the past several years, students, teachers, administrators and parents have become increasingly concerned with questions about the rights and responsibilities of individuals and groups within the schools. This highly complex and sometimes volatile issue is being raised during an era in which the most pressing questions being asked by society are in regard to human rights and social responsibilities. The problem of student rights can be viewed, therefore, as a manifestation of a much larger social phenomenon.

This document addresses itself to the rights and responsibilities of the parties most intimately concerned with this issue. Efforts have been made to eliminate statements which represent moral judgements and opinions; and confine this document to statements and positions which can be substantiated by recent court decisions or other official actions. In this respect, the intent of this document is to provide a source of information and *suggested guidelines* to local school districts in the development of their own policies on student rights and responsibilities.

The Michigan Department of Education has involved many people from as many diverse school areas as possible — teachers, administrators, students, parents, and Departmental personnel — who have worked together in the development and preparation of this document. Mr. John Dobbs of the Department has coordinated this input, and Mr. David Lowman, also of the Department, wrote the initial draft. The Department is particularly grateful to the Ad Hoc Commission on Disorder and Disruption in Michigan Secondary Schools which spent many hours reviewing and discussing the preliminary materials for these state guidelines. In addition, the State Board of Education and staff expresses its appreciation to the Michigan Education Association, the Michigan Federation of Teachers, the Michigan Congress of School Administrators Associations, the Michigan Association of School Boards, and the State Advisory Council on Elementary and Secondary Education for their invaluable contributions to these guidelines.

Although no specific recommendations are made in this document regarding how local boards of education might achieve the goal of effective student rights and responsibilities, it is the intent of the State Board that (1) each district promulgate a formal written code of student conduct, (2) make it public and accessible to all students and parents, and (3) within the document, define as precisely as possible student rights and responsibilities, including unacceptable student behavior and penalties to be imposed when such behavior is exhibited. The State Board of Education is hopeful that local boards will find this publication useful, and the Department will annually review its content for revision and updating.

John W. Porter

part 1

INTRODUCTION

A. BACKGROUND INFORMATION

The State Board of Education's 1971 publication, *The Common Goals of Michigan Education*, identified under "Citizenship and Morality," Goal 3 — Rights and Responsibilities of Students, states:

> *"Michigan education must recognize and protect the individual and legal rights of students as people and as citizens, regardless of race, religion, or economic status. Together with these rights, students must accept responsibilities and disciplines essential to our society. Implicit in this goal is the recognition of the corresponding rights of parents, teachers, and other participants in the educational process."*

Because of a variety of numbers and types of unprecedented incidents, the general issue of students' rights and responsibilities has, in the past five to ten years, become a matter of considerable concern in Michigan and in the nation. This educational concern, similar to others of a controversial nature, is manifested by students, their parents, and the general public; and, it is of particular interest to those school board members, school administrators, counselors, and teachers whose responsibility it is to maintain, administer, and operate the public system of elementary and secondary education.

Inquiries pertaining to students' rights and responsibilities received by the Michigan Department of Education indicate an increasing "need to know" by local school officials. By the same token, questions and complaints received from parents and students underscore both the necessity for current information and the variance of present practice in handling issues of school control of student behavior.

B. PURPOSE OF GUIDELINES

This publication attempts to present a set of guidelines for the use of local school officials as those officials attempt to deal with the complex and often troublesome problems arising from the schools' attempts to maintain an educational environment conducive to learning. These guidelines are merely that: *they are not meant to be mandatory impositions placed upon local school districts and their officials by the State.*

The need for guidelines of student conduct is also reflected in increased litigation concerning student behavior. The mixed findings in recent court cases have pointed out the lack of set procedures that ensure student and school board rights.

These guidelines describe areas of concern as indicated by recent litigation, questions received from local school districts, and complaints received from parents and students. They also present, as a frame of reference, the status of current school law where and as it applies to the area of students' rights and responsibilities.

C. ORGANIZATION OF DOCUMENT

The document is divided into five major sections. The first section presents background information and states the purpose and need for such a document.

The second section describes the aspects of current law and practices relative to student behavior.

The third section deals with specific student behavior in terms of rights and responsibilities. Approximately twelve major areas of student behavior and concern have been identified. School districts experience the most difficulty in these areas; hence, suggested procedures have been recommended *for local school district consideration.*

Because of the very high degree and anxiety on the part of parents, students and administrators, the twelfth area of student behavior — suspension of students — is discussed separately in the fourth section of the document along with guidelines for procedural due process.

The fifth section is a summary of the document with requests for continual review and reevaluation by the educational, student, and citizen community.

part 2

CURRENT LAW AND PRACTICE

A. AUTHORITY OF LOCAL BOARDS OF EDUCATION

(1955) P.A. 269 MCLA 340.1 ET. SEQ; MSA 15.3001, ET. SEG is known as the *School Code.*

Section 614 of the *School Code* authorizes local boards of education to enact

> "... *reasonable rules and regulations relative to anything whatever necessary for the proper establishment, maintenance, management and carrying on of the public schools of such district, including regulations relative to the conduct of pupils concerning their safety while in attendance at school or enroute to and from school.*"

Nevertheless, as local school boards and school officials adopt rules that maintain an environment conducive to learning, they must also consider other criteria: the authority of the State Board of Education, the rights of students, and the responsibilities of students.

B. AUTHORITY OF THE STATE BOARD OF EDUCATION

The State Board of Education, under its leadership obligations, believes the issue of students' rights and responsibilities to be an important matter, but one best administered by local school districts. The State Board to this point has restricted its official action in this area to simply requiring local districts to adopt written codes of student conduct. The text of the Board's resolution dated December 9, 1970, is as follows:

> *(that) "... school districts be required, by April 1, 1971, to notify the State Board of Education that the local board of education had adopted, or is adopting, a Code of Student Conduct which code identified categories of misconduct, defines the conditions under which students may by suspended or expelled, and specifies the procedural due process safeguards which will be utilized in the implementation of the locally-adopted student conduct codes. ..."*

C. RIGHTS OF STUDENTS

The Constitution of the United States through the Bill of Rights and subsequent amendments gives all citizens certain rights. The U.S. Supreme Court has declared that students do not shed those constitutional rights by walking through the school door.[1] In other words, young people who are students are protected by the mantle of the Constitution, and that responsibility for protection applies to boards of education as it does other individuals and agencies.[2]

To be sure, students are citizens in a specialized situation. Specifically, they attend a school whose function and responsibility is to deal with and educate large numbers of people. Because of this special situation, no court of law has ever denied to schools the authority to generally regulate the behavior of the students there assembled. In fact, it may be accurately stated that the legal history of this century indicates a reluctance by courts to involve themselves in the administrative function of the school.

As the state legislature has given school boards rule-making authority regarding student behavior, so is that authority balanced by the Constitution and the Courts.

D. RESPONSIBILITIES OF STUDENTS

The word "responsibility" is not an easy one to define, nor, for that matter, is the word "rights." Although it is relatively easy to glibly quote the phrase "rights must be balanced with responsibilities," this phrase, too, is anything but simply defined.

The concept of rights *and* responsibilities, or rights *versus* responsibilities needs elaboration. As students have increasingly had their rights clarifeid through litigation, so too have they been reminded of and instructed in their responsibilities. To be sure, there can be little question as to the inter-relatedness of the two concepts, however there is also an important distinction between the two. Rights, as afforded us by the Constitution, are a legal requirement. The mere fact of citizen status (modified by the Courts' varying interpretations) is enough to bestow these rights. One may lose these rights or be deprived of them if one violates the rights of others.

Responsibilities, on the other hand, are not so clearly spelled out. While rights may be explicit, responsibilities are implicit. Where rights are stated, responsibilities are tacit.

Although it can be said that a person has a responsibility to himself (indeed, that may be said to be a responsibility of very high priority), still, in a democratic society, the word "rights" refers mainly to that which a person may take for himself as an individual. The word "responsibility" refers mainly to the individual's obligation to others within his society, because, in order for an individual to preserve his/her rights, each must take upon himself a sense of responsibility toward the preservation of the rights of others. In other words, while an individual does have rights to pursue his own self-fulfillment, those rights must terminate at that point where they begin to impinge upon the rights of others. To fail to recognize this delicate balance and limitations of one's own rights is to fail to see the importance of responsibility in a democratic society. Thus, rights must necessarily be limited, but, ultimately that limitation becomes one's best assurance of the continuation of those rights. If, for example, school-initiated discipline codes are based largely on the concept of disruption to the educational process, students and their parents should know that they are in part responsible for seeing that other students' rights to an education in nondisruptive surroundings are assured. Each student, then, becomes responsible to a certain extent, for the educational rights of his or her fellows. To the extent that responsibilities are fulfilled, rights become more assured. To the extent responsibilities are not carried out, one's rights become jeopardized. It is for this reason that emphasis is placed upon student responsibilities in this document. Each such responsibility listed below should be tested against each student behavior that follows in Part III of this document.

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[1] *Tinker v. Des Moines Independent Community School District*, 39 US 503, 89 S ct 733, 21L ed 2d 731 (1969)

[2] *West Virginia Board of Education v. Barnette*, 319 US 624. See also *In re Gault*, 387 US 1, 13 87 S ct 1428, 1436, 18 L ed 2d 527, 538 (1967).

Responsibilities then become the foundation upon which individual rights become meaningful and effective. If one were to enumerate the various responsibilities incumbent upon students, the list would be endless. However, within the school setting and in society, there are responsibilities of such vital significance that not to identify them would certainly denote negligence.

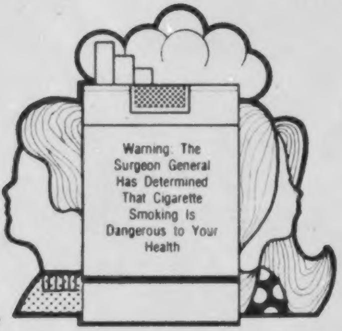
Each student has the responsibility to:

1. Respect the inherent human dignity and worth of every other individual.
2. Be informed of and adhere to reasonable rules and regulations established by boards of education and implemented by school administrators and teachers for the welfare and safety of students.
3. Study diligently and maintain the best possible level of academic achievement.
4. Be punctual and present in the regular school program to the best of one's ability.
5. Refrain from libel, slanderous remarks and obscenity in verbal and written expression and observe fair rules in conversation and responsible journalism.
6. Dress and appear in a manner that meets reasonable standards of health, cleanliness and safety.
7. Help maintain and improve the school environment; preserve school property and exercise the utmost care while using school facilities.

8. Deport oneself in an appropriate manner while in attendance to all school or school related functions held on or off school grounds.
9. Continue or become actively involved in one's education, understanding of people and preparation for adult life.

part 3

STUDENT BEHAVIOR AND GUIDELINES


Warning: The Surgeon General Has Determined That Cigarette Smoking Is Dangerous to Your Health

Guideline 1 Smoking in the Schools

CURRENT LAW AND PRACTICE

Perhaps the largest single discipline problem faced by public schools in Michigan, and in the nation, is the question of student smoking. Generally, Michigan public schools, under the authority of Section 614 of the *School Code*, have enacted rules prohibiting student smoking in school, on school grounds and at school functions.

The *School Code* does not include specific regulations concerning student smoking in public schools. The Courts have not provided any definitive information in regard to the issue of student smoking. However, the *Criminal Statute* of Michigan specifies that no minor may purchase or possess cigarettes MCLA 722.642; MSA 25.282. Additionally, any adult who encourages the assembly of minors for the purpose of smoking on property held by him is guilty of a criminal offense. MCLA 722.643; MSA 25.283.

SUGGESTED PROCEDURES

As many school officials are aware, the administrative problem of dealing with student smoking in violation of local school rules is prevalent and difficult. It is noted that in some schools student smoking "lounges" similar to such facilities now maintained for teachers have been established. In those instances, student smoking lounges are to be used only by students 18 or older. Also note that the State Board of Education in its publication *The Age of Majority* recommended that: "No person shall be allowed to smoke in the school building or on the school premises, except in prescribed areas; no person shall be allowed to smoke at school functions, even those held away from school. Students shall, however, be allowed to carry tobacco products on their persons, providing they are at least 18 years of age.[1] It should be noted, however, that there is no age law prohibiting the carrying of tobacco products.

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[1] *The Age of Majority. Guidelines for Local Districts*, Michigan State Board of Education, 1972, p. 13.

Guideline 2
School Records

CONFIDENTIAL
SCHOOL
Records

CURRENT LAW AND PRACTICE

No single area of interest in the general field of students' rights and responsibilities is shrouded in uncertainty for all participants in the school experience as the specific question of student's records. MCLA 600.2165; MSA 27 A. 2165

> *No teacher, guidance officer, school executive or other professional person engaged in character building in the public schools or in any other educational institution, including any clerical worker of such schools and institutions, who maintains records of students' behavior or who has such records in his custody, or who receives in confidence communications from students or other juveniles, shall be allowed in any proceedings, civil or criminal, in any court of this state, to disclose any information obtained by him from such records or such communications; nor to produce such records or transcript thereof, except that any such testimony may be given, with the consent of the person so confiding or to whom such records relate, if such person is 18 years of age or over, or, if such person is a minor, with the consent of his or her parent or legal guardian.*

This statute is the sole reference to the question of student records. Additionally, little can be found is case law or findings of courts that is pertinent to the complex problem faced daily by school administrators, counselors, secretaries, students and their parents.

The magnitude of this problem in Michigan public schools is probably best reflected in the codes of student conduct in the files of the Michigan Department of Education. Practically none of these locally adopted codes of conduct specify to the student how records, either cumulative, psychological or anecdotal, are acquired, maintained or disposed of by the school. It is possible, therefore, that most Michigan school districts do not now have operative written policy or procedures governing the school's practice regarding students' records. To illustrate, local officials and school boards may wish to ask the following questions:

What should be the purpose of the school's keeping of student records?

What decisions and actions should be based on the contents of the student's file?

What material should be placed in the student's file?

Should there be more than one set of records for each student?

Should the student and/or his or her parents or guardian be notified when anecdotal material is inserted in the student's record?

Should the student rebut such anecdotal material?

Should the student be permitted to see the material contained in his or her records?

Should the parent or guardian be permitted to see the material contained in the student's record?

To whom, outside the school, should the school provide access to any information contained in the student's record?

Should such access be authorized only by permission of the student and/or the student's parent, if a minor?[4]

As can be seen by the listing of only some of the questions pertinent to this area of concern, there are many gray areas concerning students' records.

Although courts of law still must decide in many of these areas of litigation, much sound and extensive research has been conducted on the right of privacy, especially as it pertains to student records. Probably the most outstanding research effort resulted from a conference convened by the Russell Sage Foundation whereby effective guidelines were developed for the collection, maintenance and dissemination of data in the records of school students.[5]

SUGGESTED PROCEDURES

It is suggested that local school districts address themselves to the often complicated task of defining and implementing substantive and procedural practices concerning the issues of students' records, as partially illustrated by the questions above. These policies and procedures should be adopted uniformly throughout the school district rather than on a school-to-school basis.

As a suggested guide to school officials, reprinted below are excerpts from the four pertinent areas of student records as recommended by the Russell Sage Foundation Report.[6]

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[4] MCLA 600.2165, MSA 27 A. 2165

[5] *Guidelines for the Collection Maintenance and Dissemination of Pupil Records: Report of a Conference on the Ethical and Legal Aspects of School Record Keeping.* Russell Sage Foundation at Sterling Forest Conference Center, Sterling Forest, NY. May, 1969. Connecticut Printers, Inc., Hartford, Conn.

[6] Ibid

1. Collection of Data
   a. School authorities are urged to begin "from the fundamental principle that no information should be collected from students without the prior informed consent of the child and his parents."
   b. "Such consent may be given either individually or through the parents' legally elected or appointed representatives (for example, the Board of Education) depending on the nature of the information to be collected."
2. Classification and Maintenance of Data
   a. One category would contain certain minimum personal data necessary for operation of the educational program; (names, address of parents, date of birth, grades, standardized achievement scores, attendance). This information can be accessible to reputable agencies and individuals with the understanding and consent of students and parents or guardians.
   b. Other categories would include more personal and sensitive information potentially useful over a period of time; (such as health data, standardized intelligence and aptitude tests, family background information, teacher and counselor ratings, clinical findings and behavioral investigations).

      This information should be closely guarded and, where appropriate, destroyed once its usefulness is ended. Only other school officials within the district or the state superintendent or his designates may receive this information, excepting a judicial order or orders of administrative agencies where those agencies have the power of subpoena. Parents and/or students should be notified of all such orders and the school's compliance.
3. Administration of Security

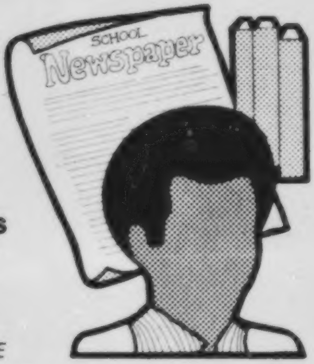
   "It is recommended that schools designate a professional person to be responsible for record maintenance and access, and to educate the staff about maintenance and access policies. All school personnel having access to records should receive periodic training in security, with emphasis upon privacy rights of students and parents.

   Records should be kept under lock and key at all times, under the supervision of the designated professional.

   It is recognized that computerized data banks pose special problems of maintenance, security, and access not fully dealt with by these Guidelines. These problems should be fully explored and procedures developed for dealing with them, with the understanding that use of external data banks for record-keeping should be in accordance with all procedures outlined in these Guidelines."

4. Dissemination of Information Regarding Pupils

"As indicated in previous sections, all information regarding pupils and their families should be collected and maintained under such safeguards of privacy as may be obtained through informed consent, verification of accuracy, limited access, selective discard, and appropriate use. As long as the data are retained within the school, it can implement these principles with some flexibility of procedures. The school, however, is often asked to transmit student information to other agencies, institutions, and even individuals. Such requests come from schools, colleges, employers, courts, police, social agencies, and sundry others. Since conveyance of records removes the data from control of the school, much more stringent precautions are required to protect the rights of the student against infringement of privacy, misinterpretation of data, and inappropriate use."



Guideline 3

Student Publications and Newspapers

CURRENT LAW AND PRACTICE

Most Michigan secondary schools and some elementary schools publish school newspapers, literary journals and other student-oriented publications. Traditionally, these school-student publications have been overseen by a faculty sponsor and/or the school administration. School policy that would control these publications or establish procedures regarding the control of these publications has ordinarily been absent, thus any sense of "adult" control has been vested in the faculty advisor or sponsor — usually a journalism or English teacher. In recent years, however, this area of school interest, as is true of many others, has become one of increased concern to school officials as students have questioned the appropriateness of school control in what students tend to consider "their" publications.

As troublesome as some school districts have found the problem of control to be, others have found it to be even more extended, for as students have encountered either official or unofficial control of their literary and journalistic offerings, such encounters have occasionally produced that time-honored phenomenon, the "underground" newspaper.

Michigan school officials, in attempting to deal with these problems, ask these questions:

In a school-sponsored (i.e., financed) newspaper or other publication written by students, can censorship be applied?

If so, to what degree?

If the school publication is financed by student funds (e.g., student activity fees), is official censorship possible?

Can students found publishing and distributing "underground" publications be censured or otherwise punished (e.g., suspended or expelled)?

As with many other areas of the student rights issue, the answers to these easily asked questions are less than definitive.

Michigan school law does not deal with this issue. Case law in Michigan is not instructive. One case brought to trial within the state, for example, was dismissed prior to a judgment.[7] In that case, a high school student was suspended for distributing an "underground" newspaper loosely connected to students and ex-students of Michigan State University. When the student brought suit against the school district, school officials agreed to rewrite the policy in question and reinstate the student.

Perhaps the most instructive case for Michigan school officials in this area involved some Illinois high school students[8] who, at their own expense published and distributed a publication called "Grass High." The publication, among other things, contained an article that was quite critical of some school officials. Subsequently, the students involved were permanently suspended from school under the authority of a statute very similar to *School Code* Section 613. The students, in due course, sued the school district and were subsequently upheld in the Seventh U.S. Circuit Court of Appeals.

School officials concerned with these issues would be well-advised to study this case in full, but, to summarize, the Court found (1) that no substantial disruption or material interference with the school's procedures had occurred, and (2) that while the article reflected a "disrespectful and tasteless attitude toward authority,"[9] the school board's disciplinary action constituted "an unjustified invasion of (the students') First and Fourteenth Amendment rights."[10]

SUGGESTED PROCEDURES

Thus, in the above case at least, the school's authority to enact rules governing the behavior of students and its parallel authority to suspend and expel students who violate those rules was tempered by both the basic First and Fourteenth Amendment rights of the individuals *and* the concept of material disruption to the school environment.

The above case, dealing as it does with unofficial or underground student publications, is to a degree less instructive regarding the school and its legal ability to regulate official, school-sponsored publications. In this respect, it is essential that

1. **school rules regulating student-run, school-sponsored publications should be clearly and comprehensively defined as to prohibited behavior.**

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[7] *Faull v. Grand Ledge Board of Education*, G-95-72CA, (1972)

[8] *Scoville v. Board of Education of Joliet Township High School District*, 425 F2d 10 (CA 7), cert den 400 US 826, 91 SCt51, 27 LEd 55 (1970). *See also, Burnside v. Byars*, 363F2d744 (CA5, 1966). *Pickering v. Board of Education of Township High School District 205*,391 US 563, 88 SCt 1731, 20 LEd 2d 811 (1968).

[9] *Scoville v. Board of Education*, supra, 425 F2d, at 14

[10] *Scoville v. Board of Education*, supra, 425 F2d, at 15

2. school officials should provide for effective supervision of school sponsored newspapers, not permitting obscene or libelous material, and editing material that would cause a substantial disruption or interference of school activities.

Two other aspects of "freedom-of-the-press" rights deserve mention. First, school officials would be well-advised to establish, before the fact, rules and procedures for the distribution of publications — be they school-sponsored or "underground." Such rules and procedures might basically address themselves to the manner, method, time and place of distribution. Secondly, some thought should be given to the type and amount of advertising, if any, to be solicited, sold and accepted in official school publications. The point of this is without appropriate school regulation, if the school accepts commercial advertising in the newspaper it might very well be legally obliged to accept political advertising,'' and, by the same token, if such advertising is accepted in official school publication, it may not be defensible to ban such advertising in "underground" publications. Advertising content, of course, would be subject to the same rules and regulations that might be established for the basic publication.

See Lehman v City of Shaker Heights 34 Ohio St 2d 143, 296 NE 2d 683, cert granted —US—, 94SCt443, 38 LEd2d 312 (1973).

Guideline 4 Other First Amendment Rights

CURRENT LAW AND PRACTICE

In addition to student publications, there are other areas of concern that involve U.S. Constitutional First Amendment rights. Most Michigan school districts have not yet reduced these issues to rules and procedures contained in student codes of conduct, reflecting perhaps a minimum amount of difficulty with student behavior vis-a-vis these issues. Nevertheless, a certain amount of difficulty has been experienced by Michigan school officials; thus it seems appropriate to briefly discuss these other First Amendment issues.

1. Patriotic and Religious Activities

The courts have generally upheld students who, for whatever their reasons, choose not to participate in school-initiated or sponsored patriotic observances and practices.[12] School Districts should therefore adopt procedures for accommodating these students in order that the corresponding rights of those students who *do* choose to participate are protected.

Regarding religious observances and practices in the public schools, the Supreme Court has decided that the following activities are prohibited:

a. Released time for religious instruction on public school property during the school day;[13]

B. Recitation of religious prayers on public school property during the school day;[14]

C. Readings from the bible on public school property during the school day.[15]

Students are *permitted* and have the right to be excused for not more than two hours per week to attend religious instruction classes off public school property during public school hours with permission of parents and guardians. (Sec. 732 School Code)

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[12] *West Virginia State Board of Education v. Barnette*, Supra

[13] *Illinois ex nel. McCollum v. Board of Education*, 333US203; 68SCt461, 92SCt649 (1948). *But see, Zolach v. Clauson*, 343US306, 72SCt679,96LEd2d 954 (1952).

[14] *Engel v. Vitale*, 370US421, 82SCt1261, 8LEd2d601 (1962).

[15] *School District of Abington Township v. Schempp*, 374US203, 83SCt1560, 10LEd2d844 (1963).

2. Assembly, Petition, Symbolic Speech, Inquiry and Expression

   Generally, these First Amendment issues can be dealt with by local school officials in much the same way that student publications are handled. It may be well to remember that while students, as citizens, are protected by the first Amendment, they nevertheless are subject to the "reasonable rules" of the school. Thus, for example, if an activity associated with circulation of a student petition substantially disrupts the normal activities of the school, the circulation (and the appropriate students) can be regulated. Similarly, if a student or students symbolically express themselves *without* disrupting school activities, rules or procedures attempting to curtail or eliminate such symbolic behavior may encounter legal difficulty. The most notable case in this respect[16] found the United States Supreme Court upholding high school students who, by wearing black armbands, sought to protest this country's military involvement in Vietnam. On the basis that, where other forms of political expression have been allowed by school authorities, there had been no material or substantial disruption to the school setting, the Supreme Court ruled the school district's attempt to prohibit such form of expression is unconstitutional.

SUGGESTED PROCEDURES

The law is fairly clear and explicit regarding freedom of expression and religious activities within the school, (as indicated on the previous pages, footnotes 11, 12, 13, 14, and 15). It is recommended that school administrators become familiar with these rulings and so provide students with proper guidance. Portions of the latter areas of study involve issues of controversy with various groups and individuals advocating different positions. Study and discussion of these issues would be a prime example of the educational process at work in a responsible and regulated setting.

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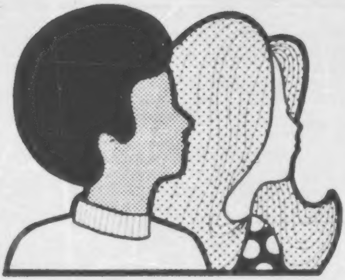
[16] *Tinker v. Des Moines Independent Community School District, supra also, Burnside v. Byars, supra Church v. Board of Education of Saline Area School District*, 339 F Supp 538 (ED MICH. 1972)

Guideline 5
Dress and Grooming



CURRENT LAW AND PRACTICE

A major discipline problem five years ago, dress and grooming is probably by comparison a relatively trouble free area of student discipline in most schools today.

Neither the Michigan general school laws nor the State Board of Education has attempted to regulate student conduct in terms of dress and grooming. There are court decisions on both sides of the question. Thus far, the U.S. Supreme Court has refused to hear any of the "hair" cases.

In response to a request from the State Board of Education, the Michigan Attorney General on November 27, 1972, issued an opinion which, in effect, says that lacking State Board of Education regulations, local school districts are within their authority to suspend and expel students who violate dress and grooming rules.[17] On the basis of the Attorney General's opinion, therefore, it seems clear that local school boards may *reasonably* regulate dress and grooming of students.

Current practice of Michigan school districts regarding student dress and grooming varies widely. It appears that a steadily increasing number of districts attempt to regulate dress and grooming of students only when such behavior is disruptive to the school setting, is obscene, or presents a health or safety hazard. This position is generally supported by the Michigan Association of School Boards, The Michigan Association of School Administrators, the Michigan Association of Elementary School Principals, the Michigan Education Association, and the Michigan Federation of Teachers. Court challenges to such criteria have been largely unsuccessful. For example, in one Michigan case[18] tried in Federal District Court, a student whose hair length exceeded the school's grooming code won the case partly because the district admitted that his hair length did not disrupt the educational activities of the school but see *Graber v. Kniola*, Michigan Court of Appeals No. 15149, issued March 27, 1974, which found unreasonable a dress code provision that requires hair length of male students must not reach the bottom of the shirt collar and must be above the eyes as *unreasonable*, there being no connection between the particular hair style and the establishment, maintenance, management and carrying on of the public schools.[19]

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[17] Letter of Opinion, Attorney General Frank J. Kelly, November 27, 1972

[18] *Church v. Board of Education of Saline Area School District*, supra *But see*, *Gfell v. Rickelman*, 441F2d-44 (CA6, 1971)

SUGGESTED PROCEDURES

School districts that attempt to regulate student dress or grooming on the basis of a particular set of personal values are perhaps more apt to find themselves in legal difficulty, assuming an aggrieved student or parent initiates litigation, and may also be asked by courts to substantiate the reasonableness of such a regulation.

Cleanliness of person and clothing is an essential part of student behavior. It is incumbent upon school personnel as well as parents to so instruct students in this respect, especially as such dress and grooming may adversely affect his or her health and appearance. However, it is the style of dress, hair and facial makeup that seems to cause severe disagreement. It is suggested that the style of clothing, facial makeup and hair be decided upon by the parent and student, or a joint understanding between parent, student and school district as reflected in that districts' local code of conduct. Such styles should not create problems of health and sanitation nor tend to disrupt the educational process.

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[19] *Graber v. Kniola*, Michigan Court of Appeals No. 15149, March 27, 1974

Guideline 6
Married and/or Pregnant Students

CURRENT LAW AND PRACTICE

MCLA 388.391-388.394; MSA 15.1958(11)-15.1958(14) prohibit the suspension, expulsion, or exclusion of a student from school solely on account of the student's pregnancy.

Michigan law, however, while protecting the rights of pregnant students is silent regarding married students; the practices of individual school districts have varied. Some districts have excluded married students regardless of their age; some districts have required married students to enroll in an adult school or an alternative educational setting; and, some districts have ignored marital status as a criteria for student discipline and attendance. The courts also are of little benefit regarding this issue. Two of the more notable cases in this area have in one case upheld the married student's right to remain in school and in the other upheld the local board's decision to exclude the married student.[20]

The Michigan Attorney General, however, in a recent letter opinion,[21] interprets a Michigan Supreme Court ruling of 1960[20] as "that married students could not be excluded from school solely because of their marital status."[22] Concerning the exclusion of married or pregnant students from extra-curricular activities, the Attorney General further states ". . . that there is no controlling authority by either the Michigan Supreme Court or the United States Supreme Court on this point."[23] Finally, the Attorney General rules that ". . . (a) rule or regulation that would bar married and/or pregnant students from participation in extra-curricular activities solely because of their marital and/or pregnant status and based upon nothing more, under the decided cases, would be unreasonable and arbitrary."[24] Hence, it is not authorized under Section 614 of the *School Code*.

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[20] *Board of Education of Harrodsburg v. Bentley*, 383SW2d 677 (Ky Ct App. 1964) (upheld student). State ex rel. *Thompson v. Marion County Board of Education*, 202 Tenn 29, 302 SW2d 57 (1957) (upheld Board of Education).

[21] Letter Opinion of the Michigan Attorney General to the Honorable William S. Ballenger, State Senator, Nov. 1, 1972, p. 3

[22] *Cochrane v. Mesick Consolidated School District Board of Education*, 360 Mich 390, 103 NW2d 569 (1960)

[23] Letter Opinion of Michigan Attorney General, Nov. 1, 1972, supra. [24] Ibid

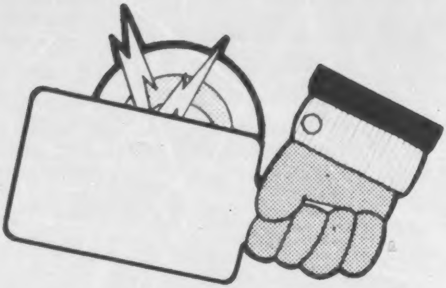
It should be noted that opinions of the Attorney General are binding upon school officials as state officers. (See *Traverse City School District v. Attorney General*, 384 Mich 390, 410), n.2; 185 NW2d 9, 17, n.2 (1971).

SUGGESTED PROCEDURES

Tradition rather than practicality has guided many school officials in their approach to the problem of married and/or pregnant high school students. Although no statute protects the rights of married students, it is suggested that school officials include in their student handbooks information regarding the marital status of a student and provide counsel or suggested referral services to the student regarding his or her newly acquired role and responsibilities. This may require consideration by both parties of program adjustments, alternative programs and future plans. The emphasis should be on providing guidance to the married student so that his/her education is continued and enhanced, and is not disruptive or deleterious to the school program. Counseling services should be available to married students on the same basis as to other enrolled students.

Although pregnant students are protected by statute, counseling services should be available to them concerning their welfare. Particular consideration, however, should be given to the health and safety of the mother and child. Students should be allowed to participate in all activities unless it can be shown (by physician's statement) that such activity would be harmful to the expectant mother and child.

School authorities should make provision for the continuation of the pregnant students' basic educational courses during the period of absence from school.



Guideline 7
Corporal Punishment

CURRENT LAW AND PRACTICE

The *School Code* contains three sections,[25] which authorize the use of physical force by school officials, including teachers, for the purpose of removing from pupils dangerous weapons and for maintaining proper discipline over pupils. While existing law is quite specific regarding such authority, many school districts have established conditions and circumstances modifying or restricting the use of corporal punishment. For example, some school districts specified what form of dicipline may or may not be used for such punishment; some districts attempt to regulate the administration of such punishment by restricting to the principal the use of corporal punishment; some school districts have indicated that corporal punishment is to be used only as a last resort; and some school districts have totally rejected the use of corporal punishment.

SUGGESTED PROCEDURES

It should be pointed out that the school's use of corporal punishment as much or more than any other function is contained within the traditional doctrine of "in loco parentis." School officials are advised, therefore, to specify in their student codes of conduct how corporal punishment will be administered. The amount of force that is used must be reasonable and should reflect on the viability, legal, political and educational implications of such use.

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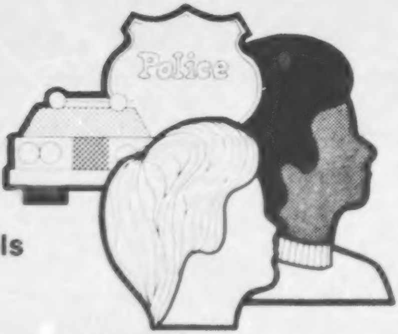
[25] *School Code*, Section 755: "Any teacher or superintendent may use such physical force as may be necessary to take possession from any pupil of any dangerous weapon carried by him.

Section 756: Any teacher or superintendent may use such physical force as is necessary on the person of any pupil for the purpose of maintaining proper discipline over the pupils in attendance at any school.

Section 757: No teacher or superintendent shall be liable to any pupil, his parent or guardian in any civil action for the use of physical norce on the person of any pupil for the purposes prescribed in sections 755 and 756 of this act, as amended, except in case of gross abuse and disregard for the health and safety of the pupil.



Guideline 8
Search and Seizure and Police in the Schools

Search and Seizure

CURRENT LAW AND PRACTICE

Students possess the right of privacy of person as well as freedom from unreasonable search and seizure of property guaranteed by the Fourth Amendment of the U.S. Constitution. That individual right, however, is balanced by the school's responsibility to protect the health, safety and welfare of all its students. The most relevant of recent court decisions[26] uphold school official's actions in this regard, specifically recognizing the right of school officials to search student lockers when " 'suspicion arises that something of an illegal nature may be secreted there.' "[27]

SUGGESTED PROCEDURES

It is suggested the following determinations be made by school officials relative to the seizure of items in the student's possession and the search of the school property (locker, desk) assigned to the student.

1. **There is reasonable cause to believe that possession constitutes a crime or rule violation, or that the student possesses evidence of a crime or violation of law.**
2. **There is reason to believe that the student is using his/her locker or property in such a way as to endanger his/her own health or safety or the health, safety and rights of others.**
3. **There is reason or belief that there are weapons or dangerous materials on the school premises. As such school officials must retain the right to act — to search students' desk and/or lockers, and to seize in cases of emergencies — such as in the event of fire or a bomb threat.**

When locker checks are made in the exercise of fundamental school authority, students should be informed within the context of general school rules at the beginning of each term. In cases of clearly defined

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[26] *People v. Overton*, 24 NY2d 522, 249 NE2d 366, 301 NYS 2d 479 (1969). *In re Donaldson*, 269 Cal App 509, 75 Cal Rptr 220 (D Ct App. 1969). *State in the Interest of G. C.*, 121 NJ Super 108, 296 A2d 102 (Cty Ct, 1972)

[27] *People v. Overton, supra*, 24 NY2d, at 524; 249 NE2d, at , 301 NYS2d, at 480

emergencies and the lack of availability of the students assigned to a locker, the principal or his designee(s) possess the authority to enter. The student, however, should be informed as soon as possible.

CURRENT LAW AND PRACTICE

This is a country of laws, designed to ensure fair treatment of all. Police have the responsibility to protect all citizens by enforcing the laws of the community. The school community should encourage and promote understanding and cooperation with the police. It is the duty of school authorities, students, teachers, parents and police to work cooperatively with each other to insure that the rights of each individual are respected.

Police in the schools are not necessarily an indication of trouble, disruption, or discontent. Police can enter the school upon invitation of school authorities. However, they may also enter if they posses evidence of a crime having been committed or if they have a warrant for arrest or search. Interrogation of students by police is to take place privately within the school and in the presence of the principal or his representative. Parents, and/or guardians are to be informed and should be present whenever possible. The Michigan Attorney General has stated:

1. "Law enforcement officers may be given access to school children on school property during school hours for the purpose of interrogation pursuant to a rule or regulation adopted by the board of education of a school district, subject to such conditions as the board of education in its discretion may reasonably impose."
2. "Law enforcement officers are empowered to arrest a person without a warrant, including children, in the case of a felony where the officer has reasonable cause to believe that the person has committed a felony or a misdemeanor committed in the officer's presence. A rule of the board of education of a school district which would permit (a) law enforcement officer to remove a student from the public schools only upon presentation of a warrant is not in accordance with law."[28]

SUGGESTED PROCEDURES

Generally, in this situation, students have the same rights as any other citizen,[29] the right to be informed of their legal rights, to be protected (by counsel or school officials) from coercion and illegal constraint, and to remain silent.[30] If the doctrine of "in loco parentis" is to maintain its vitality, school officials must continue to have a legal responsibility to protect minor students while they are physically on school grounds or at school functions.

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[28] OAG, 1961-1962, No 3537, p 155 (September 8, 1961)

[29] *In re Gault, supra*

[30] *Miranda v. Arizona*, 384 US 436, 86 SCt 1602, 16 LEd 2d 694 (1966).

Guideline 9

The Charging of Fees and the Withholding of Grades, Credits, Diplomas and Transcripts

Diplom
Transcript
Report Card

CURRENT LAW AND PRACTICE

Though not usually associated with the larger area of student's rights and responsibilities, a constantly recurring problem for school officials and students alike regards the traditional school response to the loss or damage to school-owned textbooks or other education materials. To illustrate, a student accused of losing or damaging a textbook is sometimes told by school administrators that his grades (and/or credits, diplomas, transcript) will be withheld until either the book is recovered or appropriate financial restitution is made.

The administrative problem schools face in attempting to recover such financial losses is admittedly a difficult one. The apparently small cost represented by one lost or stolen textbook when multiplied by many incidents over many years becomes a significant amount of money. Nevertheless, school officials who utilize this traditional administrative method of recouping losses may encounter legal difficulties.

By way of explanation, it must first be understood that local school districts "may charge students for damage to books and supplies, over and above ordinary wear and tear, and for the loss of books and supplies."[31] However, there are two separate issues, that speak to the practice of withholding a student's grades or diploma for charges owed to the school.

1. The Michigan Attorney General has declared "that a board of education of a school district is without authority as a disciplinary measure, to withhold a high school diploma of a student who has fulfilled all the academic requirements for graduation."[32]
2. There is legal opinion that holds that credits earned by a pupil are valuable, thus property. As property, then the opinion states, the

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[31] Memorandum from a Michigan Assistant Attorney General, dated August 12, 1970

[32] II OAG, 1959-1960, No 3545, p 114, 115 (August 29, 1960)

> credits cannot be summarily taken away from or deprive the student without violating the due process clause of the 14th Amendment to the Constitution of the United States.[33]

SUGGESTED PROCEDURES

One alternative many school districts are beginning to utilize in order to avoid possible legal difficulties and yet recoup their losses, is to collect a deposit at the time the student enrolls. Such action guards against the legal pitfalls discussed above and more nearly assures the district that harmful losses will not occur. This practice has been supported by the State Board of Education. The deposits, however, "must be reasonable and refundable."[34] Students without economic means should not be required to furnish deposits.

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[33] *Steele v. Sexton*, 253 Mich 32, 234 NW 436 (1931) (Potter, J., dissenting)

[34] State Board of Education Position Statement on Free Textbooks, Materials, and the Charging of Fees, March, 1972, p. 2

Fraternities

Guideline 10

Fraternities, Sororities and Secret Societies

CURRENT LAW AND PRACTICE

Sections 921-924 of the *School Code* declare the illegality of public school students organizing, joining or belonging to fraternities, sororities or other secret societies. Further, the law authorizes the suspension or expulsion of students who are in violation and denies academic credit to such students. School officials and school board members who knowingly consent to, or permit, such student violations are also in violation of the law.

SUGGESTED PROCEDURES

Secret societies, although very much a part of the history of this country, are usually discriminatory in membership and questionable in terms of purposes and goals. For these reasons, among others, school officials are advised to adhere to the prohibitive ruling of the *School Code*.

Guideline 11
The Age of Majority

CURRENT LAW AND PRACTICE

On January 1, 1972, Act No. 79 of the Public Acts of 1971, lowered the age of majority for Michigan citizens from 21 years to 18 years. Since that time, school officials have often asked what considerations, if any, pertaining to student discipline must be or should be given those students who become legal adults prior to their departure from the public schools.

To be sure, there are several implications for school officials, but, generally, the administration of student discipline is not affected by the new law. In other words, in most cases, the age of the student is not a factor in the school's regulation of student conduct. If, for example, school officials wish to totally prohibit student smoking in school buildings, it makes no legal difference whether the student, is 15, 18 or even older. However, an important legal question is raised if adult students are prohibited from smoking while the adult faculty is permitted to do so.

SUGGESTED PROCEDURES

Future litigation may clarify areas of ambiguity relative to the lowering of the age of majority. At present, the following areas appear to contain the most likely problems:

1. **Student Records — Schools that generally prohibit students from examining their own personal, cumulative and anecdotal records may not legally be able to prohibit the 18-year old from doing so, and should therefore avoid to the extent possible conflicting rules for students because of age.**
2. **Attendance Regulations — Schools that require students to bring a parental excuse for absence or tardiness may not compel the 18-year old student to do so. As in the first instance, the local board of education should adopt procedures which will, to the extent possible, avoid treating students differently solely because of age.**

In these areas, school officials are probably best advised to establish procedures for confronting these problems before they develop. The advice of legal counsel is recommended.

Finally, the publication, *The Age of Majority: Guidelines for Local Districts*[35] may be of help to local school officials.

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[35] *The Age of Majority: Guidelines for Local District*, Michigan Department of Education, 1972

part 4

SUSPENSION OF STUDENTS AND PROCEDURAL DUE PROCESS[36]

CURRENT LAW AND PRACTICE

1. Authority of *School Code*

By the authority of Section 613 of the *School Code*, local school boards:

> "... may authorize or order the suspension or expulsion from school of a pupil guilty of gross misdemeanor or persistent disobedience, when in its judgment the interests of the school may demand it. ..."

The Legislature in enacting this law did not define "gross misdemeanor," or "persistent disobedience."

2. Education as a Right

Confronted by this statutory authority, as cited above, school administrators are also faced by the conflicting knowledge made more apparent in recent years that public education, rather than being a privilege, is an important right. There are many problems experienced by school administrators pertaining to suspension and expulsion, particularly of students under the age of 16, regarding the legal and constitutional concept of procedural due process of law. Students who are in danger of being either suspended or expelled have shown an increasing desire, as supported by many courts, in being provided procedural due process; and while neither the *School Code* nor the State Board of Education has defined procedural due process for purposes of suspension and expulsion, there are, however, a number of component elements that both speak to and embody the concept of procedural due process.

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[36] Though the law specifically authorizes the suspension and expulsion of students, and though the concept of such exculsions are similar, this section of the Guide attempts to deal primarily with the questions of suspension and procedural due process, since the State Board of Education is in the process of developing statewide expulsion appeals procedures.

In Michigan schools, expulsion, as the most serious school-initiated punishment, should be decided upon by the board of education upon recommendation of the superintendent and his subordinates MCLA 340.613; NSA 15.3613. However, the State Board of Education is in the process of developing a statewide process on student expulsion appeals procedures, with emphasis *only* on *procedural* due process.

Suspension, on the other hand, resists easy classification to a greater extent than expulsion and its subsequent processes. A suspension "for the remainder of the school year" may be for one day, one week, one month, and even a semester or longer. Similarly an indefinite suspension or suspensions made pending compliance with a given rule can obviously be for very short or very long periods of time. As mentioned earlier, procedural due process requirements will also vary depending upon the length of suspension.

SUGGESTED PROCEDURES

Elements of Procedural Due Process

The following are some of the elements of due process that should be considered:

1. **The timely and specific notice of charges against the student.**
2. **The student's right to question each member of the professional and school staff involved in or witness to the incident.**
3. **The student's right to present evidence in his or her behalf.**
4. **The student's right to an impartial hearing.**
5. **The student's right to confront and to cross examine adverse witnesses and to present witnesses in his or her behalf.**
6. **The student's right to be represented by qualified counsel at the hearing.**
7. **The student's right to a record of the hearing.**
8. **The student's right to appeal an unfavorable decision by the hearing panel to a higher authority.**

The elements noted above are the embodiment of a concept. However, there is obviously a great deal of substantive difference between a one-day suspension for being mildly insubordinate and an extensive suspension for persistent, recurrent disobedience. A student in danger of being suspended indefinitely — in other words, being deprived of his right to a public education — might well expect to receive

all or most of the elements listed above prior to such action.[37] Indeed, one case[38] tried in U.S. District Court ordered a Michigan school district give an expelled student a hearing in accordance with the guidelines laid down in an earlier Federal case.[39] Those guidelines, the Court noted, included "notice containing a statement of the specific charges and grounds which, if proven, would justify expulsion under the regulations of the Board of Education; a hearing affording 'an opportunity to hear both sides in considerable detail' preserving the rudiments of an adversary proceeding; names of witnesses against the student; and, the opportunity to present to the Board his own defense."[40] A student being suspended for a short period of time, on the other hand, might receive adequate procedural due process by a conversation with the principal. Such a conversation would confront the student with the alleged rule violation and offer the student an opportunity to deny or rebut whatever evidence is offered against him.

It seems important to emphasize the flexibility of the concept of procedural due process. As one court has stated, "the hearing procedure required, will vary depending upon the circumstances of the particular case."[41] Another Federal District Court in Michigan declared that the principles of due process "are very flexible and *the degree of rigidity depends upon the gravity of the penalty* which may be imposed"[42] (emphasis supplied). As one Federal District Court noted, it is "clear that it [procedural due process] need follow no particular ritual. . . ."[43]

It would probably be best for local school officials to classify suspensions and resulting due process requirements in a uniform, districtwide fashion. For example:

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[37] *Vail v. Board of Education of Portsmouth School District*, 354 F Supp 592 (D NH, 1973)

[38] *Vought v. VanBuren Public Schools*, 303 F Supp 1388 (ED Mich 1969)

[39] *Dixon v. Alabama State Board of Education*, 294 F2d150 158 (CA 5), cert den 368 US 930 82 SCt 368, 7 LEd 2d 193 (1961)

[40] *Vought v. VanBuren Public Schools*, supra, 303 F.Supp. at 1393

[41] *Davis v. Ann Arbor Public Schools*, supra, 303 F Supp. at 1393

[42] *Godsey v. Rosevile Public Schools* US District Court Eastern District, Michigan, Case No 34988

[43] *Davis v. Ann Arbor Public Schools*, supra, 313 F Supp. at 1227

Length of Suspension	*Who Suspends*	*Procedural Due Process Requirements*
1-5 school days	Principal upon delegation of authority of board of education	a. informal meeting with principal prior to suspension
		b. student presented with charges, evidence and witnesses, if any, against him
		c. student given opportunity to deny charges, rebut evidence and question accusers and witnesses
		d. unfavorable decision may be appealed to superintendent or his designee
6-10 school days	Superintendent upon recommendation of principal and with delegated authority of board of education	a. informal hearing with superintendent or person designated by the local school board
		b. student presented with charges, evidence and witnesses, if any, against him
		c. student given opportunity to deny charges, rebut evidence and question accusers and witnesses
		d. student entitled to present own witnesses or to be represented by an attorney
		e. unfavorable decision may be appealed to local board of education
More than 10 school days	Board of Education upon recommendation of superintendent	same as expulsion

Note that the above is intended *only* as a guide to local school districts, an illustration of a system that might be utilized.

The right to an education is a very basic right. At the same time some students may be expelled for various reasons. However, this action should be used judiciously and at the same time school districts should establish and develop alternative means for such students to receive an education.

Apparently some Michigan school districts have already become aware of and sensitive to these impending difficulties as reflected by the establishment of public alternative schools. Still other districts have expressed in their codes of student conduct the intent or desire to provide such alternative education to students who are suspended and expelled. The State Board of Education supports this concept.

part 5

SUMMARY

As styles of living and traditional habits change in our society no one institution experiences the trauma involved and, at the same time, the often severe task of trying to overcome such trauma, than the educational institution.

Students, in preparation for their various roles in the adult society, must be conscious of their rights and committed to their responsibilities. In providing leadership for local school districts in Michigan, the State Board of Education, working in close conjunction with various representative elements of these local school districts, has developed a comprehensive guide that speaks to approximately twelve crucial areas of student rights, while at the same time noting that coupled with rights of students are inherent student responsibilities, nine of which are highlighted in part II of this document.

Each of the twelve areas of student behavior is discussed primarily from two standpoints:

1. Current Law and Practice

   The elements of compiled Michigan laws (School Code) that may apply to student behavior plus a review of various court decisions and state Attorney General opinions.

2. Suggested Procedures

   In each area, this is followed up by some suggested approaches or procedures local school districts may follow where appropriate.

Students need and seek proper guidance and direction. Most school districts in the state have been providing it for many years through the promulgation of their own locally developed and adopted codes of student behavior. Many of these documents were utilized as resource information in the development of the state guidelines.

In retrospect, the need for such guidelines stem from the following:

1. There are some districts that have poorly developed or no codes of student conduct. Some of these districts, among others, have requested assistance and guidance as they attempt to establish new and updated student rules and regulations.
2. Other districts constantly find their student codes outdated by the times or upstaged by the courts on various decisions affecting student conduct so many requests were received to keep local districts informed as to the current information and trends.

3. There appears to be a need for consistency of procedures from across the state so that each local school code of conduct, in a broad sense, reflects the spirit and the reality of the Michigan Board of Education's *Common Goal, "The Rights and Responsibilities of Students."*

It should be kept in mind that throughout this process five major factors form the basic "failsafe" ingredients and requirements which should accompany all prescribed school rules.[44]

1. Rules must be disseminated and known in advance.
2. Rules must have a proper educational purpose.
3. Rules must have a rational relationship to that educational purpose.
4. Rules must be reasonable and clear in meaning.
5. Rules should be specific in scope.

If someone has a right, someone else has a responsibility. In other words, if a school board has a *right* to adopt a student code of conduct, then students have a *responsibility* to conduct themselves in accordance with such a code of conduct.

Local boards of education are urged to use this document as a basis for referral and direction in developing and/or refining their own local student behavior guidelines. Each board of education, superintendent and secondary school principal in the state will be provided with a copy. It is expected that in addition to its use as a resource for local code development, its contents and suggested procedures will be discussed with parents, students and interested citizens within each district.

Finally, one of the important purposes of the document is to invite constant and continued review and reevaluation of a consistent and effective approach to student behavior by the educational community and citizenry. Only in this cooperative way, through educational leadership at the state and local levels, combined with parent and student involvement, can school officials continue to improve the educational models in this state and provide for all youth humane solutions and directions to human problems and concerns.

NOTE: An extended bibliography concerning the issues dealt with by the Guidelines has been filed with the Michigan Department of Education, State Library, 735 East Michigan Avenue, Lansing, Michigan (517) 373-1593 and is available upon request.

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[44] Dr. E. Edmond Reutter, Professor of Education Teachers College, Columbia Univ., N.Y., Presentation before "The National Task Force for High School Reform", Atlanta, Ga. March 4, 1974.

B/ INDIANA STATUTE ON STUDENT CONDUCT

28-5355 {IC 20-8-9.5-2}. *Pupil conduct—Legislative policy.*—Student supervision and the desirable behavior of students in carrying out school purposes in any school corporation is a responsibility shared by the students, parents, teachers and school corporation personnel, subject to the rules and policies adopted by the governing body, to the supervisory authority of the school corporation administrative staff, the principal of each school and the teachers and other school corporation employees having charge of any educational function. [IC 1971, 20-8-9.5-2, as added by Acts 1972, P. L. 162, § 1, p. 806.]

28-5356 {IC 20-8-9.5-3}. *Pupil conduct—Delegation of authority*—In carrying out the school purposes of the school corporation the following grants of authority are hereby made:

(a) Each teacher shall when pupils are under his charge have the right to take any action which is then reasonably necessary to carry out, or to prevent, an interference with the educational function of which he is then in charge. Teachers shall not have the right to suspend students from school, and exclusion of a student from any educational function within a teacher's supervision shall not extend for a period of more than one [1] day without the approval of the principal or his designee.

(b) Each principal within the school or school function under his jurisdiction, the superintendent and the administrative staff with his approval, with respect to all schools, may make written rules and establish written standards governing student conduct, and take any action which is reasonably necessary to carry out, or to prevent interference with carrying out, any educational function.

(c) The governing body may make written rules and establish written standards concerning student conduct which are reasonably necessary to carry out, or to prevent intereference [interference] with carrying out, any educational function.

(d) The superintendent of schools within the entire school corporation, and the principal within each school, are authorized to adopt formal policies establishing lines of responsibility and related guidelines and regulations.

(e) The governing body may make such other delegations of rulemaking, disciplinary and other authority as are reasonably necessary in carrying out the school purposes of the school corporation. [IC 1971, 20-8-9.5-3, as added by Acts 1972, P. L. 162, § 1, p. 806.]

28-5357 {IC 20-8-9.5-4}. *Pupil conduct—Limitation of delegation.*—The delegations of authority provided in sec. 3 [§ 28-5356] shall, however, be subject to the following limitations:

(a) Delegation of authority shall be necessary in carrying out school purposes and shall comply with the applicable statutes of the state of

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Compiler's Note. The bracketed word "interference" was inserted by the compiler.

Indiana and with the constitutions of Indiana and of the United States. Rules, standards or actions shall not discriminate against any student or class of students, but the number of schools or students to which they apply shall not be determinative of whether they thus discriminate. Rules, standards or actions which interfere with a constitutionally protected fundamental student right shall be valid only in instances where they are necessary to prevent an interference with school purposes, and all rules, standards or actions shall be reasonably necessary in carrying out school purposes.

(b) All rules, standards or policies adopted by anyone other than the governing body and applying to any group of students or to students generally, shall not be effective until they are reviewed and approved by the superintendent and until they shall be presented to the governing body. The governing body may change any such rule, standard or policy in accordance with procedures which it may from time to time adopt.

(c) No rule or standard shall be effective with respect to any student until a written copy thereof is made available or delivered to the student or his parent, or is otherwise given general publicity within any school to which it applies. This limitation shall not be construed technically and shall be satisfied in any case where there has been a good faith effort to disseminate to students or parents generally the text or substance of any rule or standard.

The provisions of subsections (b) and (c) above, however, shall not apply to rules or directions concerning the movement of students, movement or parking of vehicles, day to day instructions concerning the operation of a classroom or teaching station, the time or times for commencement of school, or other standards or regulations relating to the manner in which an educational function is to be carried out. [IC 1971, 20-8-9.5-4, as added by Acts 1972, P. L. 162, § 1, p. 806.]

28-5358 {IC 20-8-9.5-5}. *Pupil conduct—Grounds for expulsion.*— The following types of student conduct shall constitute grounds for expulsion subject to the procedural provisions of this chapter [§§28-5354—28-5369]:

(a) Use of violence, force, noise, coercion, threat, intimidation, fear, passive resistance or other comparable conduct, constituting an interference with school purposes, or urging other students to engage in such conduct. The following enumeration is illustrative of the type of conduct prohibited by this subparagraph: (1) occupying any school building, school grounds, or part thereof with intent to deprive others of its use; (2) blocking the entrance or exits of any school building or corridor or room therein with intent to deprive others of lawful access to or from, or use of, the building or corridor or room; (3) setting fire to or substantially damaging any school building or property; (4) firing, displaying, or threatening use of firearms, explosives, or other weapons on the school premises for any unlawful purpose; (5) prevention of or attempting to prevent by physical act the convening or continued functioning of any school or educational function, or of any lawful meeting or assembly on school property; and (6) continuously and intentionally making noise or acting in any manner so as to interfere seriously with any teacher's ability to conduct the educational function under his supervision. This subparagraph shall not, however, be construed to make any particular student conduct a ground for expulsion where such conduct is constitutionally protected as an exercise of free speech or assembly or otherwise under the Constitution of Indiana or the United States.

(b) Causing or attempting to cause substantial damage to school property, stealing or attempting to steal school property of substantial value, or repeated damage or theft involving school property of small value.

(c) Intentionally causing or attempting to cause substantial damage to valuable private property or stealing or attempting to steal valuable private property, on school grounds or during an educational function or event off school grounds; or repeatedly damaging or stealing private property on school grounds, or during an educational function or event off school grounds or when such student is traveling to or from school or such educational function or event.

(d) Intentionally causing or attempting to cause physical injury or intentionally behaving in such a way as could reasonably cause physical injury to a school employee: (1) on the school grounds during and immediately before or immediately after school hours; (2) on the school grounds at any other time when the school is being used by a school group; or (3) off the school grounds at an educational function or event. Self defense or reasonable action undertaken on the reasonable belief that it was necessary to protect some other person shall not, however, constitute a violation of this provision.

(e) Intentionally doing serious bodily harm to any student: (1) on the school grounds during and immediately before or immediately after school hours; (2) on the school grounds at any other time when the school is being used by a school group; or (4) off the school grounds at an educational function or event by the school corporation, or when such student is traveling to or from school or such educational function.

Self-defense or reasonable action undertaken on the reasonable belief that it was necessary to protect some other person shall not, however, constitute a violation of this provision.

(f) Threatening or intimidating any student for the purpose of, or with the intent of, obtaining money or anything of value from such student.

(g) Knowingly possessing, handling or transmitting any object that can reasonably be considered a weapon: (1) on the school grounds during and immediately before or immediately after school hours; (2) on the school grounds at any other time when the school is being used by a school group; or (3) off the school grounds at any educational function or event sponsored by the school.

Such objects shall not include school supplies, such as pencils or compasses, where they have a reasonable use in connection with an educational function in which the student is engaged, but do include any firearm, any explosive including firecrackers, any knife other than a small penknife, except where such items have reasonable use in connection with any such educational function.

(h) Knowingly possessing, using, transmitting or being under the influence of any narcotic drug, hallucinogenic drug, amphetamine, barbiturate, marijuana, alcoholic beverage, or intoxicant of any kind: (1) on the school grounds during and immediately before or immediately after school hours; (2) on the school grounds at any other time when the school is being used by any school group; or (3) off the school grounds at a school activity, function or event.

Use of a drug authorized by a medical prescription from a registered physician shall not be a violation of this rule.

(i) Engaging in the unlawful selling of narcotics or other violation of criminal law which constitutes a danger to other students, or constitutes an interference with school purposes.

(j) Failing in a substantial number of instances to comply with directions of teachers, during any period of time when he is properly under their supervision, where such failure constitutes an interference with school purposes.

(k) Engaging in any activity forbidden by the laws of the state of Indiana which constitutes an interference with school purposes.

(l) A violation, or repeated violation, of any rules validly adopted pursuant to sections 3 and 4 [§§ 28-5356 and 28-5357] of this chapter. [IC 1971, 20-8-9.5-5, as added by Acts 1972, P. L. 162, § 1, p. 806.]

28-5359 {IC 20-8-9.5-6}. *Pupil conduct—Exclusion—Circumstances.*—Any student may be excluded from school in the following circumstances, subject to the procedural provisions of this chapter [§§ 28-5354—28-5369]:

(a) If he has a dangerous communicable disease transmissible through normal school contacts that poses a substantial threat to the health or safety of the school community.

b) If his immediate removal is necessary to restore order or to protect persons on school corporation property. This shall include conduct off school property where on account thereof the student's presence in school would constitute an interference with school purposes.

(c) Where any student is mentally or physically unfit for school purposes, subject, however, to the procedure set up under the provisions of IC 1971, 20-8-8-5 [§ 28-5310], and to the limitations and regulations authorized to be established thereunder by the state board of education. [IC 1971, 20-8-9.5-6, as added by Acts 1972, P. L. 162, § 1, p. 806.]

28-5360 {IC 20-8-9.5-7}. *Pupil conduct—Short-term suspension—Grounds.*—Any principal may deny a student the right to attend school or to take part in any school function for a period of up to five [5] school days, the number of the days to be determined by rule of the governing body which rule may include a requirement that approval of the superintendent of schools is necessary if the governing body limits the power of the principal's supervision to a lesser period than five [5] school days, on the following grounds:

(a) Conduct constituting grounds for expulsion as set out in section 5 [§ 28-5358].

(b) Other violation of rules and standards of behavior adopted under this chapter [§§ 28-5354—28-5369]. Such short-term suspension shall be made solely after the principal has made an investigation thereof and has determined that such suspension is necessary to help any student, to further school purposes, or to prevent an interference therewith.

Within twenty-four [24] hours, or such additional time as is reasonably necessary, following such suspension, the principal shall send a written statement to the student's parent describing the student's conduct, misconduct or violation of any rule or standard and the reasons for the action taken. The principal shall make a reasonable effort to hold a conference with the parent before or at the time the student returns to school. [IC 1971, 20-8-9.5-7, as added by Acts 1972, P. L. 162, § 1, p. 806.]

28-5361 {IC 20-8-9.5-8}. *Pupil conduct — Other remedies.* — The superintendent, principal, any administrative personnel or any teacher of the school corporation shall be authoried to take any action in connection with student behavior, in addition to the actions specifically provided in this chapter [§§28-5354—28-5369], reasonably desirable or necessary to help any student, to further school purposes, or to prevent an interference therewith, such action including such matters as counseling with a student or group of students, conferences with a parent or group of parents, assigning students additional work, rearranging class schedules, requiring a student to remain in school after regular school hours to do additional school work or for counseling, or restriction of extra-curricular activity. [IC 1971, 20-8-9.5-8, as added by Acts 1972, P. L. 162, § 1, p. 806.]

28-5362 {IC 20-8-9.5-9}. *Pupil conduct—Expulsion and exclusion—Procedure.*—The following procedures shall be followed before a student is disciplined by an expulsion, or is excluded, as defined in section 1(g) [§ 28-5354(g)] of this chapter:

(a) A written charge shall be filed by the principal with the superintendent. If the superintendent deems that there are reasonable grounds for investigation or that an investigation is desirable, he shall within twenty-four [24] hours after such charge is filed appoint a hearing examiner.

(b) The hearing examiner shall within forty-eight [48] hours after he is appointed, or such additional time as is reasonably necessary, give notice to the student and his parent. Such notice shall include the following: (1) the rule or standard of conduct allegedly violated and the acts of the student alleged to constitute a cause for exclusion or expulsion. This shall include a summary of the evidence to be presented against the student but this provision shall not be technically interpreted if there is a good faith effort to make such statement; (2) the penalty, if any, the principal or his designee has requested in his charge and any other penalty to which the student may be subject; (3) the time and place for the hearing; (4) a description of the hearing procedures provided by this Chapter [§§ 28-5354—28-5369]; (5) a statement that the student, his parent or other representatives, including counsel, has a right to examine his academic and disciplinary records and any affidavits to be used at the hearing concerning the alleged misconduct and a right to know the identity of the witnesses to appear against him, except where the giving of such names of such witnesses may, in the opinion of the hearing examiner, subject them to unreasonable harrassment [harassment]; and (6) a statement that before expulsion or exclusion can be invoked, the student has a right to a hearing which may be waived if the student and his parent sign a statement to that effect.

The student or his representative shall have the right to examine the records and affidavits provided in subsection (b) (5) above and the statement of any witness in the possession of the school corporation.

(c) A hearing on the exclusion or expulsion as provided in section 11 [§ 28-5364] of this chapter.

(d) The evidence presented at the hearing shall either be recorded by shorthand reporter or taped or shall be made in summary form by the hearing examiner. The student shall have the right to cause the proceedings to be taped or taken by a shorthand reporter or stenotype if the hearing examiner does not do so. In the latter event, if the student is reasonably unable to pay the cost of record, the school corporation shall do so.

(e) A report by the hearing examiner of his findings and a recommendation of the action to be taken, which report should explain in terms of the needs of both the student and the school corporation the reasons for the particular action recommended. Such recommendation may range from no action through the entire field of counseling to expulsion or exclusion.

(f) A review of such report by the superintendent who may change or revoke the sanction recommended by the hearing examiner but shall not impose a sanction more severe than that recommended by the hearing examiner.

(g) A mailing by certified mail or personal delivery to the student or his parent of the notice, the findings and recommendations of the hearing examiner and the determination the superintendent.

(h) The determination by the hearing examiner, the determination by the superintendent, and any determination on appeal to the governing body shall be made solely on the basis of the evidence presented at the

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Compiler's Note. The bracketed word "harassment" was inserted by the compiler.

hearing, or in addition on any evidence presented on appeal. [IC 1971, 20-8-9.5-9, as added by Acts 1972, P.L. 162, §1, p. 806.]

28-5363 {IC 20-8-9.5-10}. *Pupil conduct — Hearing examiner — Superintendent functions.*—The hearing examiner shall be any person on the school corporation's administrative staff, or its counsel, provided he (i) has not brought the charges against the student, (ii) will not be a witness at the hearing and (iii) has no involvement in the charge. The superintendent may designate himself as the hearing examiner.

The hearing examiner shall have the following duties:

(a) to give the notice provided in section 9 [§ 28-5362];

(b) to schedule the hearing at a specified date, time and place with the authority to postpone the date and time or change the place for any good cause;

(c) to insure that any records of the student or any statements of witnesses are available to him, his parent or representative before the hearing;

(d) to be available before the hearing to answer any questions the student, his parent or representative may have about the nature and conduct of the hearing;

(e) to take full charge of the hearing, subject to the provisions of this chapter [§§ 28-5354—28-5369]; and

(f) to prepare findings of fact and recommendations as provided above and transmit them to the superintendent as soon as reasonably possible after the hearing.

If the rules of the governing body so provide, there shall be appointed in addition to a hearing examiner, a hearing committee who shall be deemed employees of the governing body and shall constitute teachers, parents and/or students. In such event, the hearing examiner shall perform all the duties provided above except that the hearing committee shall determine by majority vote the findings of fact and make the recommendations, the hearing examiner to have no vote in such determination. Any minority report shall be made a part of the record. [IC 1971, 20-8-9.5-10, as added by Acts 1972, P. L. 162, § 1, p. 806.]

28-5364 {IC 20-8-9.5-11}. *Pupil conduct—Conduct of hearing.*—The following provisions shall apply to the hearing provided in this chapter [§§ 28-5354—28-5369]:

(a) The hearing may be attended by the hearing examiner, the hearing committee, if any, the superintendent, the principal, the student, the parent, and the student's representative, and counsel for the school corporation where the hearing examiner or the superintendent deems this advisable. Witnesses should be present only when they are giving information at the hearing. The student may be excluded in the discretion of the hearing examiner with the concurrence of the student's parent at times when his psychological or emotional problems are being discussed. The student's representative may be, but need not be, an attorney. The hearing examiner may exclude anyone from the hearing when his actions disrupt an orderly hearing.

(b) The student may speak in his own defense and may be questioned on his testimony but he may choose not to testify and in such case he shall not be threatened with punishment or later punished for refusal to testify.

(c) The principal shall present to the hearing examiner statements in affidavit form of any person having information about the student's conduct, and the student's records, but not unless such statements and records have been made available to the student, his parent or representative prior to the hearing. If the principal or the hearing examiner deems it necessary, the information contained in such records shall be explained and interpreted at the hearing, or prior thereto to the student, parent or representative, by a person trained in their use and interpretation.

(d) In conducting the hearing, the hearing examiner shall not be bound by the rules of evidence or any other courtroom procedure.

(e) The student, his parent or representative, the principal, or the hearing examiner may ask witnesses to testify at the hearing. Such testimony shall be under oath; and the hearing examiner shall be authorized to administer the oath.

(f) The student or his representative, the principal, or the hearing examiner, shall have the right to examine or cross-examine any witness giving information at the hearing. The hearing examiner may, however, limit the right of any party to examine or cross-examine any witness to the extent that such examination is abusive or interferes with the conduct of an orderly hearing.

(g) The hearing shall be held within a period of five [5] days after the notice is given to the parent and the student but such time shall be changed by the hearing examiner for good cause.

(h) The hearing may be waived, but only by a written instrument signed by both the student and his parent, but such waiver shall be valid only if made voluntarily and with knowledge of the procedure available hereunder and of the consequences of the waiver.

(i) Where more than one [1] student is charged with violating the same rule and have acted in concert and where the facts are substantially the same for all such students, a single hearing may be conducted for such students as a group if the hearing examiner believes: (1) a single hearing is not likely to result in confusion; and (2) no student will have his interests substantially prejudiced by a single hearing. If during the conduct of the hearing the hearing examiner finds that a student's interests will be substantially prejudiced by a group hearing, or that the hearing is resulting in confusion, he may order a separate hearing for any student.

(j) Any person giving evidence by affidavit or in person at a hearing shall be given the same immunity from liability to the students, parent or to other persons, as a person testifying in a court case.

(k) The school corporation acting through the superintendent may cause legal counsel to be present either for the purpose of acting as the designee of the principal or for the purpose of advising the hearing examiner in the conduct of the hearing. Any counsel who advises the hearing examiner in the conduct of the hearing may not also act as the designee of the principal. [IC 1971, 20-8-9.5-11, as added by Acts 1972, P. L. 162, § 1, p. 806.]

28-5365 [IC 20-8-9.5-12]. *Pupil conduct—Record, appeals, review and other provisions.*—(a) The record in a case shall consist of the charge, the notice, the evidence or a summary thereof made by the hearing examiner, his findings and recommendations, and the action of the superintendent. With respect to any appeal to court or any appeal after the first appeal, the record shall consist, in addition, of any additional evidence taken and any additional action taken in the case.

(b) The student may within thirty [30] days appeal the superintendent's determination to the governing body by a written request, such request to be filed with the administrative office of the governing body or with the superintendent. Such an appeal shall be made on the record, except that new evidence may be admitted to avoid a substantial threat of unfairness. The governing body may alter the superintendent's disposition of the case if it finds his decision to [too] severe.

(c) The governing body may, where a recommendation has been made by a designee of the superintendent, provide by general rule, for an additional administrative appeal to a designated member of the administrative staff, subject to the same rules as provided in paragraph (b) above, before the matter is presented to the governing body.

(d) The final action of the governing body shall be evidenced by personally delivering or mailing by certified mail a copy of the governing body's decision to the student and his parent. At any time within sixty [60] days thereafter, the student may appeal such determination to the circuit or superior court in the county where the principal office of the governing body is located. Such appeal shall be initiated by the filing of a complaint which shall be sufficient if it alleges in general terms that the governing body acted arbitrarily, capriciously, without substantial evidence, unreasonably or unlawfully. The trial of the appeal, except as provided herein, shall be tried in the same manner as other civil cases. The defendant shall be the school corporation, and, within the time provided for a responsive pleading, it shall file therewith the record. Where a part of the record consists of the evidence on tape, such tape may be presented in lieu of a typed copy thereof. Such case shall, without motion of either party, be advanced on the court's docket. The record shall constitute the evidence on appeal to court; the court shall hear such additional evidence as shall be necessary to determine the issues fully.

Compiler's Note. The bracketed word "too" was inserted by the compiler.

(e) Any penalty provided by a determination in the hearing procedure shall be applied pending an appeal unless it is stayed by the hearing examiner, or governing body, or by the court after an appeal has been filed herein.

(f) No expulsion or exclusion of a student shall be for a longer period than the remainder of the school year in which it took effect. If the student is less than sixteen [16] years of age, any expulsion or exclusion taking effect more than three [3] weeks prior to the beginning of the second semester of any school year shall be automatically reviewed at the beginning of such second semester. Such review shall be done under the same procedure, to the extent reasonably applicable, provided in sections 9 through 13 [§§ 28-5362—28-5366], but the subsequent review shall be limited to newly discovered evidence or evidence occurring since the original hearing. This review may lead to a recommendation that the student be reinstated for the second semester.

(g) Any statement, notice, recommendation, or determination or similar action shall be effectively given at the time a written evidence thereof is delivered personally or is mailed by certified mail to a student or his parent. [IC 1971, 20-8-9.5-12, as added by Acts 1972, P. L. 162, § 1, p. 806.]

28-5366 {IC 20-8-9.5-13}. *Pupil conduct—Time of proceedings and suspension pending an appeal.*—(a) The hearing and determination of a case of student expulsion or exclusion by a hearing examiner or hearing committee shall be completed within ten [10] days of the time the student is suspended from school, unless it can not be reasonably held within such time or unless the student requests a delay of the proceedings.

(b) A student may be suspended pending a hearing on his expulsion or exclusion by the principal for a period not to exceed five [5] school days, or for a period extending to the time of hearing by the hearing examiner. In such event the student, his parent or representative shall have the right as soon as reasonably possible after the charge is brought against the student to a preliminary conference with the principal or hearing examiner to persuade the principal or hearing examiner that there is a compelling reason why the student should not be suspended pending a hearing. [IC 1971, 20-8-9.5-13, as added by Acts 1972, P. L. 162, § 1, p. 806.]

28-5367 {IC 20-8-9.5-14}. *Pupil conduct—Additional rules of governing body.*—The governing body may by rule amplify, supplement or extend the procedures provided in this chapter, in any way not inconsistent herewith. Any hearing held in violation of such rules shall be illegal. [IC 1971, 20-8-9.5-14, as added by Acts 1972, P. L. 162, § 1, p. 806.]

28-5368 {IC 20-8-9.5-15}. *Pupil conduct—Charges by a student.*—Where a student or his parent believes that the student is being improperly denied participation in any educational function of the school corporation, or is being subjected to an illegal rule or standard, as provided by the statutes of the state of Indiana or applicable statute of the United States, or by the constitutions of the state of Indiana or of the United States, he shall, if unable to work out his problems with members of the administrative staff, be entitled to initiate a hearing by filing a charge with the superintendent in the same manner as a charge is initiated by the principal under section 9 [§ 28-5362] hereof, and the provisions of sections 9 through 13 [§§ 28-5362—28-5366] of this chapter to the extent applicable shall apply to the determination of any such charge. The ruling of the hearing examiner and determination of the superintendent shall with respect to participation in an educational function be denied, granted in whole, or granted subject to limitations, and with respect to the validity of a rule or standard or its application, to a recommendation that it be changed. An appeal from such decision and determination may be made to the governing body either by the student or by the superintendent, such appeal to be undertaken within thirty [30] days. In any case involving the validity of a rule or standard, or its application, the matter shall be automatically appealed to the governing body which shall make the final administrative determination. Nothing in this section shall limit the power of the governing body from hearing petitions of students, parents, teachers, taxpayers, or other interested persons to change rules, or limit the power of the governing body to make or to change any rule or standard on its own motion, all subject to such rules relating to administrative procedure as the governing body shall adopt in connection therewith. In the event the governing body changes a rule or standard, or its application, it shall not be limited to the record. [IC 1971, 20-8-9.5-15, as added by Acts 1972, P. L. 162, § 1, p. 806.]

28-5369 {IC 20-8-9.5-16}. *Pupil conduct—Compliance with compulsory attendance law.*—If a student is suspended, expelled or excluded from school or from any educational function in accordance with the provisions of this chapter [§§ 28-5354—28-5369], his absence from school on account thereof shall not be deemed a violation on the part of any person under IC 1971, 20-8-1, 20-8-8, or any other statutes of the state of Indiana relating to compulsory attendance at school. No decision of any court of the state of Indiana shall override a suspension, exclusion or expulsion made as provided under this chapter except by way of the appeal provided under section 12 [§ 28-5365] of this chapter. [IC 1971, 20-8-9.5-16, as added by Acts 1972, P. L. 162, § 1, p. 806.]

Compiler's Note. IC 1971, 20-8-1 and 20-8-8, comprise §§ 28-5306—28-5310, 28-5311—28-5329, 28-5335—28-5347, 28-5511.

Separability. Section 2 of Acts 1972, P. L. 162 reads: "If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable."

Emergency. Section 3 of Acts 1972, P. L. 162 reads: "Whereas there is a more immediate necessity for the taking effect of this act it shall be in full force and effect from and after September 1, 1972."

APPENDIX V

V. Recent Supreme Court Decisions Affecting the Scope of School Authority and Student Rights

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A. Freedom of Expression: Symbolic Armbands *(Tinker v. Des Moines* 287

B. Freedom of Expression: Unofficial Student Publications *(Jacobs v. School Commissioners of the City of Indianapolis)*

C. Procedural Due Process: Disciplinary Hearings *(Goss v. Lopez)*

D. Substantive Due Process: Sufficiently of Evidence in Disciplinary Hearings *(Wood v. Strickland)*

NOTE: When these Proceedings went to press the Supreme Court had heard oral arguments but had not rendered opinions in the cases referenced B, C and D above.

Copies of the decisions, however, may be obtained approximately 10 days after their issuance by writing Charles Vergon, Program for Educational Opportunity, University of Michigan School of Education, Ann Arbor, Michigan 48104. Additionally, the Program has scheduled a series of seven conferences during the Winter and Spring of 1975 devoted to "Current Issues in Educational Policy and the Law." Each of the three pending decisions will be among those treated. For more information contact the Program.

V. Recent Supreme Court Decisions Affecting the Scope of School Authority and Student Rights

A. FREEDOM OF EXPRESSION: SYMBOLIC ARMBANDS TINKER ET AL. v. DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 21. Argued November 12, 1968—Decided February 24, 1969.

MR. JUSTICE FORTAS delivered the opinion of the Court.

Petitioner John F. Tinker, 15 years old, and petitioner Christopher Eckhardt, 16 years old, attended high schools in Des Moines, Iowa. Petitioner Mary Beth Tinker, John's sister, was a 13-year-old student in junior high school.

In December 1965, a group of adults and students in Des Moines held a meeting at the Eckhardt home. The group determined to publicize their objections to the hostilities in Vietnam and their support for a truce by wearing black armbands during the holiday season and by fasting on December 16 and New Year's Eve. Petitioners and their parents had previously engaged in similar activities, and they decided to participate in the program.

The principals of the Des Moines schools became aware of the plan to wear armbands. On December 14, 1965, they met and adopted a policy that any student wearing an armband to school would be asked to remove it, and if he refused he would be suspended until he returned without the armband. Petitioners were aware of the regulation that the school authorities adopted.

On December 16, Mary Beth and Christopher wore black armbands to their schools. John Tinker wore his armband the next day. They were all sent home and suspended from school until they would come back without their armbands. They did not return to school until after the planned period for wearing armbands had expired—that is, until after New Year's Day.

This complaint was filed in the United States District Court by petitioners, through their fathers, under § 1983 of Title 42 of the United States Code. It prayed for an injunction restraining the respondent school officials and the respondent members of the board of directors of the school district from disciplining the petitioners, and it sought nominal damages. After an evidentiary hearing the District Court dismissed the complaint. It upheld the constitutionality of the school authorities' action on the ground that it was reasonable in order to prevent disturbance of school discipline. 258 F. Supp. 971 (1966). The court referred to but expressly declined to follow the Fifth Circuit's holding in a similar case that the wearing of symbols like the armbands case be prohibited unless it "materially and substantially interfere[s] with the requirements of appropriate discipline in the operation of the school." *Burnside v. Byars*. 363 F.2d 744, 749 (1966).[1]

On appeal, the Court of Appeals for the Eighth Circuit considered the case *en banc*. The court was equally divided, and the District Court's decision was accordingly affirmed, without opinion. 383 F.2d 988 (1967). We granted certiorari. 390 U.S. 942 (1968).

I.

The District Court recognized that the wearing of an armband for the purpose of expressing certain views is the type of symbolic act that is within the Free Speech Clause of the First Amendment. See *West Virginia*

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[1] In *Burnside*, the Fifth Circuit ordered that high school authorities be enjoined from enforcing a regulation forbidding students to wear "freedom buttons." It is instructive that in *Blackwell v. Issaquena County Board of Education*, 363 F. 2d 749 (1966), the same panel on the same day reached the opposite result on different facts. It declined to enjoin enforcement of such a regulation in another high school where the students wearing freedom buttons harassed students who did not wear them and created much disturbance.

v. Barnette, 319 U.S. 624 (1943); *Stromberg v. California*, 283 U.S. 359 (1931). Cf. *Thornhill v. Alabama*, 310 U.S. 88 (1940); *Edwards v. South Carolina*, 372 U.S. 229 (1963); *Brown v. Louisiana*, 383 U.S. 131 (1966). As we shall discuss, the wearing of armbands in the circumstances of this case was entirely divorced from actually or potentially disruptive conduct by those participating in it. It was closely akin to "pure speech" which, we have repeatedly held, is entitled to comprehensive protection under the First Amendment. Cf. *Cox v. Louisiana*, 379 U.S. 536, 555 (1965); *Adderley v. Florida*, 385 U.S. 39 (1966).

First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. This has been the unmistakable holding of this Court for almost 50 years. In *Meyer v. Nebraska*, 262 U.S. 390 (1923), and *Bartels v. Iowa*, 262 U.S. 404 (1923), this Court, in opinions by Mr. Justice McReynolds, held that the Due Process Clause of the Fourteenth Amendment prevents States from forbidding the teaching of a foreign language to young students. Statutes to this effect, the Court held, unconstitutionally interfere with the liberty of teacher, student, and parent.[2] See also *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *West Virginia v. Barnette*, 319 U.S. 624 (1943); *McCollum v. Board of Education*, 333 U.S. 203 (1948); *Wieman v. Updegraff*, 344 U.S. 183, 195 (1952) (concurring opinion); *Sweezy v. New Hampshire*, 354 U.S. 234 (1957); *Shelton v. Tucker*, 364 U.S. 479, 487 (1960); *Engel v. Vitale*, 370 U.S. 421 (1962); *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967); *Epperson v. Arkansas*, *ante*, p. 97 (1968).

In *West Virginia v. Barnette*, *supra*, this Court held that under the First Amendment, the student in public school may not be compelled to salute the flag. Speaking through Mr. Justice Jackson, the Court said:

> "The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures—Boards of Education not excepted. These have, of course, important, delicate,

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[2] *Hamilton v. Regents of Univ. of Cal.*, 293 U.S. 245 (1934), is sometimes cited for the broad proposition that the State may attach conditions to attendance at a state university that require individuals to violate their religious convictions. The case involved dismissal of members of a religious denomination from a land grant college for refusal to participate in military training. Narrowly viewed, the case turns upon the Court's conclusion that merely requiring a student to participate in school training in military "science" could not conflict with his constitutionally protected freedom of conscience. The decision cannot be taken as establishing that the State may impose and enforce any conditions that it chooses upon attendance at public institutions of learning, however violative they may be of fundamental constitutional guarantees. See, *e.g.*, *West Virginia v. Barnette*, 319 U.S. 624 (1943); *Dixon v. Alabama State Board of Education*, 294 F.2d 150 (C.A. 5th Cir. 1961); *Knight v. State Board of Education*, 200 F. Supp. 174 (D. C. M. D. Tenn. 1961); *Dickey v. Alabama State Board of Education*, 273 F. Supp. 613 (D. C. M. D. Ala. 1967). See also Note, Unconstitutional Conditions, 73 Harv. L. Rev. 1595 (1960); Note, Academic Freedom, 81 Harv. L. Rev. 1045 (1968).

> and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes." 319 U.S. at 637.

On the other hand, the Court has repeatedly emphasized the need for affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools. See *Epperson v. Arkansas, supra,* at 104; *Meyer v. Nebraska, supra,* at 402. Our problem lies in the area where students in the exercise of First Amendment rights collide with the rules of the school authorities.

II.

The problem posed by the present case does not relate to regulation of the length of skirts or the type of clothing, to hair style, or deportment. Cf. *Ferrell v. Dallas Independent School District,* 392 F.2d 697 (1968); *Pugsley v. Sellmeyer,* 158 Ark. 247, 250 S. W. 538 (1923). It does not concern aggressive, disruptive action or even group demonstrations. Our problem involves direct, primary First Amendment rights akin to "pure speech."

The school officials banned and sought to punish petitioners for a silent, passive expression of opinion, unaccompanied by any disorder or disturbance on the part of petitioners. There is here no evidence whatever of petitioners' interference, actual or nascent, with the schools' work or of collision with the rights of other students to be secure and to be let alone. Accordingly, this case does not concern speech or action that intrudes upon the work of the schools or the rights of other students.

Only a few of the 18,000 students in the school system wore the black armbands. Only five students were suspended for wearing them. There is no indication that the work of the schools or any class was disrupted. Outside the classrooms, a few students made hostile remarks to the children wearing armbands, but there were no threats or acts of violence on school premises.

The District Court concluded that the action of the school authorities was reasonable because it was based upon their fear of a disturbance from the wearing of the armbands. But, in our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression. Any departure from absolute regimentation may cause trouble. Any variation from the majority's opinion may inspire fear. Any word spoken, in class, in the lunchroom, or on the campus, that deviates from the views of another person may start an argument or cause a disturbance. But our Constitution says we must take this risk, *Terminiello v. Chicago,* 337 U.S. 1 (1949); and our history says that it is this sort of hazardous freedom—this kind of openness—that is the basis of our national strength and of the independence and vigor of Americans who grow up and live in this relatively permissive, often disputatious, society.

In order for the State in the person of school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. Certainly where there is no finding and no showing that engaging in the forbidden conduct would "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school," the prohibition cannot be sustained. *Burnside v. Byars, supra,* at 749.

In the present case, the District Court made no such finding, and our independent examination of the record fails to yield evidence that the school authorities had reason to anticipate that the wearing of the armbands would substantially interfere with the work of the school or impinge upon the rights of other students. Even an official memorandum prepared after the suspension that listed the reasons for the ban on wearing the armbands made no reference to the anticipation of such disruption.[3]

On the contrary, the action of the school authorities appears to have been based upon an urgent wish to avoid the controversy which might result from the expression, even by the silent symbol of armbands, of opposition to this Nation's part in the conflagration in Vietnam.[4] It is revealing, in this respect, that the meeting at which the school principals decided to issue the contested regulation was called in response to a student's statement to the journalism teacher in one of the schools that he wanted to write an article on Vietnam and have it published in the school paper. (The student was dissuaded.[5])

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[3] The only suggestions of fear of disorder in the report are these:

"A former student of one of our high schools was killed in Viet Nam. Some of his friends are still in school and it was felt that if any kind of a demonstration existed, it might evolve into something which would be difficult to control."

"Students at one of the high schools were heard to say they would wear arm bands of other colors if the black bands prevailed."

Moreover, the testimony of school authorities at trial indicates that it was not fear of disruption that motivated the regulation prohibiting the armbands; the regulation was directed against "the principle of the demonstration" itself. School authorities simply felt that "the schools are no place for demonstrations," and if the students "didn't like the way our elected officials were handling things, it should be handled with the ballot box and not in the halls of our public schools."

[4] The District Court found that the school authorities, in prohibiting black armbands, were influenced by the fact that "[t]he Viet Nam war and the involvement of the United States therein has been the subject of a major controversy for some time. When the arm band regulation involved herein was promulgated, debate over the Viet Nam war had become vehement in many localities. A protest march against the war had been recently held in Washington, D.C. A wave of draft card burning incidents protesting the war had swept the country. At that time two highly publicized draft card burning cases were pending in this Court. Both individuals supporting the war and those opposing it were quite vocal in expressing their views." 258 F. Supp. at 972–973.

[5] After the principals' meeting, the director of secondary education and the principal of the high school informed the student that the principals were opposed to publication

It is also relevant that the school authorities did not purport to prohibit the wearing of all symbols of political or controversial significance. The record shows that students in some of the schools wore buttons relating to national political campaigns, and some even wore the Iron Cross, traditionally a symbol of Nazism. The order prohibiting the wearing of armbands did not extend to these. Instead, a particular symbol—black armbands worn to exhibit opposition to this Nation's involvement in Vietnam—was singled out for prohibition. Clearly, the prohibition of expression of one particular opinion, at least without evidence that it is necessary to avoid material and substantial interference with schoolwork discipline, is not constitutionally permissible.

In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are "persons" under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State. In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved. In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views. As Judge Gewin, speaking for the Fifth Circuit, said, school officials cannot suppress "expressions of feeling with which they do not wish to contend." *Burnside v. Byars, supra,* at 749.

In *Meyer v. Nebraska, supra,* at 402, Mr. Justice McReynolds expressed this Nation's repudiation of the principle that a State might so conduct its schools as to "foster a homogeneous people." He said:

> "In order to submerge the individual and develop ideal citizens, Sparta assembled the males at seven into barracks and intrusted their subsequent education and training to official guardians. Although such measures have been deliberately approved by men of great genius, their ideas touching the relation between individual and State were wholly different from those upon which our institutions rest; and it hardly will be affirmed that any legislature could impose such restrictions upon the people of a State without doing violence to both letter and spirit of the Constitution."

This principle has been repeated by this Court on numerous occasions during the intervening years. In *Keyishian v. Board of Regents,* 385 U.S. 589, 603, Mr. Justice Brennan, speaking for the Court said:

> " 'The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.' *Shelton v. Tucker,* [364 U.S. 479,] at 487. The classroom is peculiarly the 'marketplace of

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of his article. They reported that "we felt that it was a very friendly conversation, although we did not feel that we had convinced the student that our decision was a just one."

ideas.' The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth 'out of a multitude of tongues, [rather] than through any kind of authoritative selection.' "

The principle of these cases is not confined to the supervised and ordained discussion which takes place in the classrom. The principal use to which the schools are dedicated is to accommodate students during prescribed hours for the purpose of certain types of activities. Among those activities is personal intercommunication among the students.[6] This is not only an inevitable part of the process of attending school; it is also an important part of the educational process. A student's rights, therefore, do not embrace merely the classroom hours. When he is in the cafeteria, or on the playing field, or on the campus during the authorized hours, he may express his opinions, even on controversial subjects like the conflict in Vietnam, if he does so without "materially and substantially interfer[ing] with the requirements of appropriate discipline in the operation of the school" and without colliding with the rights of others. *Burnside v. Byars, supra,* at 749. But conduct by the student, in class or out of it, which for any reason—whether it stems from time, place, or type of behavior—materially disrupts classwork or involves substantial disorder or invasion of the rights of others is, of course, not immunized by the constitutional guarantee of freedom of speech. Cf. *Blackwell v. Issaquena County Board of Education,* 363 F.2d 749 (C. A. 5th Cir. 1966).

Under our Constitution, free speech is not a right that is given only to be so circumscribed that it exists in principle but not in fact. Freedom of expression would not truly exist if the right could be exercised only in an area that a benevolent government has provided as a safe haven for crackpots. The Constitution says that Congress (and the States) may not abridge the right to free speech. This provision means what it says. We properly read it to permit reasonable regulation of speech-connected activities in carefully restricted circumstances. But we do not confine the permissible exercise of First Amendment rights to a telephone booth or the four corners of a pamphlet, or to supervised and ordained discussion in a school classroom.

If a regulation were adopted by school officials forbidding discussion of the Vietnam conflict, or the expression by any student of opposition to it anywhere on school property except as part of a prescribed classroom exercise, it would be obvious that the regulation would violate the constitutional rights of students, at least if it could not be justified by a showing that the students' activities would materially and substantially disrupt the work and discipline of the school. Cf. *Hammond v. South Carolina State College*, 272 F. Supp. 947 (D. C. S. C. 1967) (orderly protest meeting on state college campus); *Dickey v. Alabama State Board of Education*, 273 F. Supp. 613 (D. C. M. D. Ala. 1967) (expulsion of student editor of college newspaper). In the circumstances of the present case, the prohibition of the silent, passive "witness of the armbands," as one of the children called it, is no less offensive to the Constitution's guarantees.

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[6] In *Hammond v. South Carolina State College,* 272 F. Supp. 947 (D. C. S. C. 1967), District Judge Hemphill had before him a case involving a meeting on campus of 300 students to express their views on school practices. He pointed out that a school is not like a hospital or a jail enclosure. Cf. *Cox v. Louisiana,* 379 U.S. 536 (1965); *Adderley v. Florida,* 385 U.S. 39 (1966). It is a public place, and its dedication to specific uses does not imply that the constitutional rights of persons entitled to be there are to be gauged as if the premises were purely private property. Cf. *Edwards v. South Carolina,* 372 U.S. 229 (1963); *Brown v. Louisiana,* 383 U.S. 131 (1966).

As we have discussed, the record does not demonstrate any facts which might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities, and no disturbances or disorders on the school premises in fact occurred. These petitioners merely went about their ordained rounds in school. Their deviation consisted only in wearing on their sleeve a band of black cloth, not more than two inches wide. They wore it to exhibit their disapproval of the Vietnam hostilities and their advocacy of a truce, to make their views known, and, by their example, to influence others to adopt them. They neither interrupted school activities nor sought to intrude in the school affairs or the lives of others. They caused discussion outside of the classrooms, but no interference with work and no disorder. In the circumstances, our Constitution does not permit officials of the State to deny their form of expression.

We express no opinion as to the form of relief which should be granted, this being a matter for the lower courts to determine. We reverse and remand for further proceedings consistent with this opinion.

Reversed and remanded.

MR. JUSTICE STEWART, concurring.

Although I agree with much of what is said in the Court's opinion, and with its judgment in this case, I cannot share the Court's uncritical assumption that, school discipline aside, the First Amendment rights of children are co-extensive with those of adults. Indeed, I had thought the Court decided otherwise just last Term in *Ginsberg v. New York*, 390 U.S. 629. I continue to hold the view I expressed in that case: "[A] State may permissibly determine that, at least in some precisely delineated areas, a child—like someone in a captive audience—is not possessed of that full capacity for individual choice which is the presupposition of First Amendment guarantees." *Id.*, at 649-650 (concurring in result). Cf. *Prince v. Massachusetts*, 321 U.S. 158.

MR. JUSTICE WHITE, concurring.

While I join the Court's opinion, I deem it appropriate to note, first, that the Court continues to recognize a distinction between communicating by words and communicating acts or conduct which sufficiently impinges on some valid state interest; and, second, that I do not subscribe to everything the Court of Appeals said about free speech in its opinion in *Burnside v. Byars*, 363 F.2d 744, 748 (C. A. 5th Cir. 1966), a case relied upon by the Court in the matter now before us.

MR. JUSTICE BLACK, dissenting.

The Court's holding in this case ushers in what I deem to be an entirely new era in which the power to control pupils by the elected "officials of state supported public schools . . ." in the United States is in ultimate effect transferred to the Supreme Court.[7] The Court brought this particular case here on a petition for certiorari urging that the First and Fourteenth Amendments protect the right of school pupils to express their political views all the way "from kindergarten through high school." Here the constitutional right to "political expression" asserted was a right to wear black armbands during school hours and at classes in order to demonstrate to the other students that the petitioners were mourning because of the death of United States soldiers in Vietnam and to protest that war which they were against. Ordered to refrain from wearing the armbands in school by the elected school officials and the teachers vested with state authority to do so, apparently only seven out of the school system's 18,000 pupils deliberately refused to obey the order. One defying pupil was Paul Tinker, 8 years old, who was in the second grade; another, Hope Tinker, was 11 years old and in the fifth grade; a third member of the Tinker family was 13, in the eighth grade; and a fourth member of the same family was John Tinker, 15 years old, an 11th grade high school pupil. Their father, a Methodist minister without a church, is paid a salary by the American Friends Service Committee. Another student who defied the school order and insisted on wearing an armband in school was Christopher Eckhardt, an 11th grade pupil and a petitioner in this case. His mother is an official in the Women's International League for Peace and Freedom.

As I read the Court's opinion it relies upon the following grounds for holding unconstitutional the judgment of the Des Moines school officials and the two courts below. First, the Court concludes that the wearing of armbands is "symbolic speech" which is "akin to 'pure speech' " and therefore protected by the First and Fourteenth Amendments. Secondly, the Court decides that the public schools are an appropriate place to exercise "symbolic speech" as long as normal school functions are not "unreasonably" disrupted. Finally, the Court arrogates to itself, rather than to the State's elected officials charged with running the schools, the decision as to which school disciplinary regulations are "reasonable."

Assuming that the Court is correct in holding that the conduct of wearing armbands for the purpose of conveying political ideas is protected by the First Amendment, cf., *e.g.*, *Giboney v. Empire Storage & Ice Co.*, 336

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[7] The petition for certiorari here presented this single question:

"Whether the First and Fourteenth Amendments permit officials of state supported public schools to prohibit students from wearing symbols of political views within school premises where the symbols are not disruptive of school discipline or decorum."

U.S. 490 (1949), the crucial remaining questions are whether students and teachers may use the schools at their whim as a platform for the exercise of free speech—"symbolic" or "pure"—and whether the courts will allocate to themselves the function of deciding how the pupils' school day will be spent. While I have always believed that under the First and Fourteenth Amendments neither the State nor the Federal Government has any authority to regulate or censor the content of speech, I have never believed that any person has a right to give speeches or engage in demonstrations where he pleases and when he pleases. This Court has already rejected such a notion. In *Cox v. Louisiana,* 379 U.S. 536, 554 (1965), for example, the Court clearly stated that the rights of free speech and assembly "do not mean that everyone with opinions or beliefs to express may address a group at any public place and at any time."

While the record does not show that any of these armband students shouted, used profane language, or were violent in any manner, detailed testimony by some of them shows their armbands caused comments, warnings by other students, the poking of fun at them, and a warning by an older football player that other, nonprotesting students had better let them alone. There is also evidence that a teacher of mathematics had his lesson period practically "wrecked" chiefly by disputes with Mary Beth Tinker, who wore her armband for her "demonstration." Even a casual reading of the record shows that this armband did divert students' mind from their regular lessons, and that talk, comments, etc., made John Tinker "self-conscious" in attending school with his armband. While the absence of obscene remarks or boisterous and loud disorder perhaps justifies the Court's statement that the few armband students did not actually "disrupt" the classwork, I think the record overwhelmingly shows that the armbands did exactly what the elected school officials and principals foresaw they would, that is, took the students' minds off their classwork and diverted them to thoughts about the highly emotional subject of the Vietnam war. And I repeat that if the time has come when pupils of state-supported schools, kindergartens, grammar schools, or high schools, can defy and flout orders of school officials to keep their minds on their own schoolwork, it is the beginning of a new revolutionary era of permissiveness in this country fostered by the judiciary. The next logical step, it appears to me, would be to hold unconstitutional laws that bar pupils under 21 or 18 from voting, or from being elected members of the boards of education.[*]

The United States District Court refused to hold that the state school order violated the First and Fourteenth Amendments. 258 F. Supp. 971. Holding that the protest was akin to speech, which is protected by the First and Fourteenth Amendments, that court held that the school order was "reasonable" and hence constitutional. There was at one time a line of cases holding "reasonableness" as the court saw it to be the test of a "due process" violation. Two cases upon which the Court today heavily relies for striking down this school order used this test of reasonableness. *Meyer v. Nebraska*, 262 U.S. 390 (1923), and *Bartels v. Iowa*, 262 U.S. 404 (1923). The opinions in both cases were written by Mr. Justice McReynolds; Mr. Justice Holmes, who opposed this reasonableness test, dissented from the holdings as did Mr. Justice Sutherland. This constitutional test of reasonableness prevailed in this Court for a season. It was this test that brought on President Franklin Roosevelt's well-known Court fight. His proposed legislation did not pass, but the fight left the "reasonableness" constitutional test dead on the battlefield, so much so that this Court in *Ferguson v. Skrupa*, 372 U.S. 726, 729, 730, after a thorough view of the old cases, was able to conclude in 1963:

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[*] The following Associated Press article appeared in the Washington Evening Star, January 11, 1969, p. A-2, col. 1:

"BELLINGHAM, Mass. (AP)—Todd R. Hennessy, 16, has filed nominating papers to run for town park commissioner in the March election.

"'I can see nothing illegal in the youth's seeking the elective office,' said Lee Ambler, the town counsel. 'But I can't overlook the possibility that if he is elected any legal contract entered into by the park commissioner would be void because he is a juvenile.'

"Todd is a junior in Mount St. Carles Academy, where he has a top scholastic record."

> "There was a time when the Due Process Clause was used by this Court to strike down laws which were thought unreasonable, that is, unwise or incompatible with some particular economic or social philosophy.
>
> "The doctrine that prevailed in *Lochner*, *Coppage*, *Adkins*, *Burns*, and like cases—that due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely—has long since been discarded."

The *Ferguson* case totally repudiated the old reasonableness due process test. The doctrine that judges have the power to hold laws unconstitutional upon the belief of judges that they "shock the conscience" or that they are "unreasonable," "arbitrary," "irrational," "contrary to fundamental 'decency,' " or some other such flexible term without precise boundaries. I have many times expressed my opposition to that concept on the ground that it gives judges power to strike down any law they do not like. If the majority of the Court today, by agreeing to the opinion of my Brother FORTAS, is resurrecting that old reasonableness-due process test, I think the constitutional change should be plainly, unequivocally, and forthrightly stated for the benefit of the bench and bar. It will be a sad day for the country, I believe, when the present-day Court returns to the McReynolds due process concept. Other cases cited by the Court do not, as implied, follow the McReynolds reasonbleness doctrine. *West Virginia v. Barnette*, 319 U.S. 624, clearly rejecting the "reasonableness" test, held that the Fourteenth Amendment made the First applicable to the States, and that the two forbade a State to *compel* little schoolchildren to salute the United States flag when they had religious scruples against doing so.[9] Neither

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[9] In *Cantwell v. Connecticut*, 310 U.S. 296, 303-304 (1940), this Court said:

"The First Amendment declares that Congress shall make no law respecting an

Thornhill v. Alabama, 310 U.S. 88; *Stromberg v. California*, 283 U.S. 359; *Edwards v. South Carolina*, 372 U.S. 229; nor *Brown v. Louisiana*, 383 U.S. 131, related to schoolchildren at all, and none of these cases embraced Mr. Justice McReynolds' reasonableness test; and *Thornhill, Edwards,* and *Brown* relied on the vagueness of state statutes under scrutiny to hold them unconstitutional. *Cox v. Louisiana*, 379 U.S. 536, 555, and *Adderley v. Florida*, 385 U.S. 39, cited by the Court as a "compare," indicating, I suppose, that these two cases are no longer the law, were not rested to the slightest extent on the *Meyer* and *Bartels* "reasonableness-due process-McReynolds" constitutional test.

I deny, therefore, that it has been the "unmistakable holding of this Court for almost 50 years" that "students" and "teachers" take with them into the "schoolhouse gate" constitutional rights to "freedom of speech or expression." Even *Meyer* did not hold that. It makes no reference to "symbolic speech" at all; what it did was to strike down as "unreasonable" and therefore unconstitutional a Nebraska law barring the teaching of the German language before the children reached the eighth grade. One can well agree with Mr. Justice Holmes and Mr. Justice Sutherland, as I do, that such a law was no more unreasonable than it would be to bar the teaching of Latin and Greek to pupils who have not reached the eighth grade. In fact, I think the majority's reason for invalidating the Nebraska law was that it did not like it or in legal jargon that it "shocked the Court's conscience," "offended its sense of justice," or was "contrary to fundamental concepts of the English-speaking world," as to the Court has sometimes said. See, *e.g.*, *Rochin v. California*, 342 U.S. 165, and *Irvine v. California*, 347 U.S. 128. The truth is that a teacher of kindergarten, grammar school, or high school pupils no more carries into a school with him a complete right to freedom of speech and expression than an anti-Catholic or anti-Semite carries with him a complete freedom of speech and religion into a Catholic church or Jewish synagogue. Nor does a person carry with him into the United States Senate or House, or into the Supreme Court, or any other court, a complete constitutional right to go into those places contrary to their rules and speak his mind on any subject he pleases. It is a myth to say that any person has a constitutional right to say what he pleases, where he pleases, and when he pleases. Our Court has decided precisely the opposite. See, *e.g.*, *Cox v. Louisiana*, 379 U.S. 536, 555; *Adderley v. Florida*, 385 U.S. 39.

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establishment of religion or prohibiting the free exercise thereof. The Fourteenth Amendment has rendered the legislatures of the states as incompetent as Congress to enact such laws. The constitutional inhibition of legislation on the subject of religion has a double aspect. On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the chosen form of religion. Thus the Amendment embraces two concepts,—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society."

In my view, teachers in state-controlled public schools are hired to teach there. Although Mr. Justice McReynolds may have intimated to the contrary in *Meyer v. Nebraska, supra,* certainly a teacher is not paid to go into school and teach subjects the State does not hire him to teach as a part of its selected curriculum. Nor are public school students sent to the schools at public expense to broadcast political or any other views to educate and inform the public. The original idea of schools, which I do not believe is yet abandoned as worthless or out of date, was that children had not yet reached the point of experience and wisdom which enabled them to teach all of their elders. It may be that the Nation has outworn the old-fashioned slogan that "children are to be seen not heard," but one may, I hope, be permitted to harbor the thought that taxpayers send children to school on the premise that at their age they need to learn, not teach.

The true principles on this whole subject were in my judgment spoken by Mr. Justice McKenna for the Court in *Waugh v. Mississippi University* in 237 U.S. 589, 596-597. The State had there passed a law barring students from peaceably assembling in Greek letter fraternities and providing that students who joined them could be expelled from school. This law would appear on the surface to run afoul of the First Amendment's freedom of assembly clause. The law was attacked as violative of due process and of the privileges and immunities clause and as a deprivation of property and of liberty, under the Fourteenth Amendment. It was argued that the fraternity made its members more moral, taught discipline, and inspired its members to study harder and to obey better the rules of discipline and order. This Court rejected all the "fervid" pleas of the fraternities' advocates and decided unanimously against these Fourteenth Amendment arguments. The Court in its next to the last paragraph made this statement which has complete relevance for us today:

> "It is said that the fraternity to which complainant belongs is a moral and of itself a disciplinary force. This need not be denied. But whether such membership makes against discipline was for the State of Mississippi to determine. It is to be remembered that the University was established by the State and is under the control of the State, and the enactment of the statute may have been induced by the opinion that *membership in the prohibited societies divided the attention of the students and distracted from that singleness of purpose which the State desired to exist in its public educational institutious.* It is not for us to entertain conjectures in opposition to the views of the State and annul its regulations upon disputable considerations of their wisdom or necessity." (Emphasis supplied.)

It was on the foregoing argument that this Court sustained the power of Mississippi to curtail the First Amendment's right of peaceable assembly. And the same reasons are equally applicable to curtailing in the States' public schools the right to complete freedom of expression. Iowa's public schools, like Mississippi's university, are operated to give students an opportunity to learn, not to talk politics by actual speech, or by "symbolic" speech. And, as I have pointed out before, the record amply shows that public protest in the school classes against the Vietnam war "distracted from that singleness of purpose which the State [here Iowa] desired to exist in its public educational institutions." Here the Court should accord Iowa educational institutions the same right to determine for themselves to what extent free expression should be allowed in its school as it accorded Mississippi with reference to freedom of assembly. But even if the record were silent as to protests against the Vietnam war distracting students from their assigned class work, members of this Court, like all other citizens, know, without being told, that the disputes over the wisdom of the Vietnam war have disrupted and divided this country as few other issues ever have. Of course students, like other people, cannot concentrate on lesser issues when black armbands are being ostentatiously displayed in their presence to call attention to the wounded and dead of the war, some of the wounded and the dead being their friends and neighbors. It was, of course, to distract the attention of other students that some students insisted up to the very point of their own suspension from school that they were determined to sit in school with their symbolic armbands.

Change has been said to be truly the law of life but sometimes the old and the tried and true are worth holding. The schools of this Nation have undoubtedly contributed to giving us tranquility and to making us a more law-abiding people. Uncontrolled and uncontrollable liberty is an enemy to domestic peace. We cannot close our eyes to the fact that some of the country's greatest problems are crimes committed by the youth, too many of school age. School discipline, like parental discipline, is an integral and important part of training our children to be good citizens—to be better citizens. Here a very small number of students have crisply and summarily refused to obey a school order designed to give pupils who want to learn the opportunity to do so. One does not need to be a prophet or the son of a prophet to know that after the Court's holding today some students in Iowa schools and indeed in all schools will be ready, able, and willing to defy their teachers on practically all orders. This is the more unfortunate for the schools since groups of students all over the land are already running loose, conducting break-ins, sit-ins, lieins, and smash-ins. Many of these student groups, as is all too familiar to all who read the newspapers and watch the television news programs, have already engaged in rioting, property seizures, and destruction. They have picketed schools to force students not to cross their picket lines and have too often violently attacked earnest but frightened students who wanted an education that the pickets did not want them to get. Students engaged in such activities are apparently confident that they know far more about how to operate public school systems than do their parents, teachers, and elected school officials. It is no answer to say that the particular students here have not yet reached such high points in their demands to attend classes in order to exercise their political pressures. Turned loose with lawsuits for damages and injunctions against their teachers as they are here, it is nothing but wishful thinking to imagine that young, immature students will not soon believe it is their right to control the schools rather than the right of the States that collect the taxes to hire the teachers for the benefit of the pupils. This case, therefore, wholly without constitutional reasons in my judgment, subjects all the public schools in the country to the whims and caprices of their loudest-mouthed, but maybe not their brightest, students. I, for one, am not fully persuaded that school pupils are wise enough, even with this Court's expert help from Washington, to run the 23,390 public school systems[10] in our 50 States. I wish, therefore, wholly to disclaim any purpose on my part to hold that the Federal Constitution compels the teachers, parents, and elected school officials to surrender control of the American public school system to public school students. I dissent.

MR. JUSTICE HARLAN, dissenting.

I certainly agree that state public school authorities in the discharge of their responsibilities are not wholly exempt from the requirements of the Fourteenth Amendment respecting the freedoms of expression and association. At the same time I am reluctant to believe that there is any disagreement between the majority and myself on the proposition that school officials should be accorded the widest authority in maintaining discipline and good order in their institutions. To translate that proposition into a workable constitutional rule, I would, in cases like this, cast upon those complaining the burden of showing that a particular school measure was motivated by other than legitimate school concerns—for example, a desire to prohibit the expression of an unpopular point of view, while permitting expression of the dominant opinion.

Finding nothing in this record which impugns the good faith of respondents in promulgating the armband regulation, I would affirm the judgment below.

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[10] Statistical Abstract of the United States (1968), Table No. 578, p. 406.